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Elements of Civics

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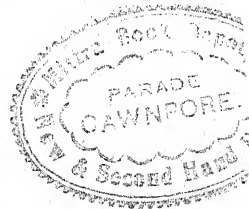
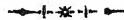
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PREFACE

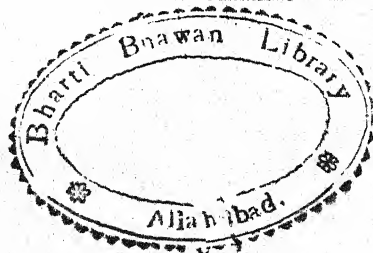
This little book on 'Civics' is meant to promote a better type of citizenship, especially in view of the responsibilities devolving on the average Indian citizen during the coming years. It is hoped that it will be found useful by the students as well as by those who are associated with the responsibilities of administration in the country. A special feature of this book is the emphasis which it lays on the rights and duties of the Indian citizen in the domestic as well as in the international dealings.

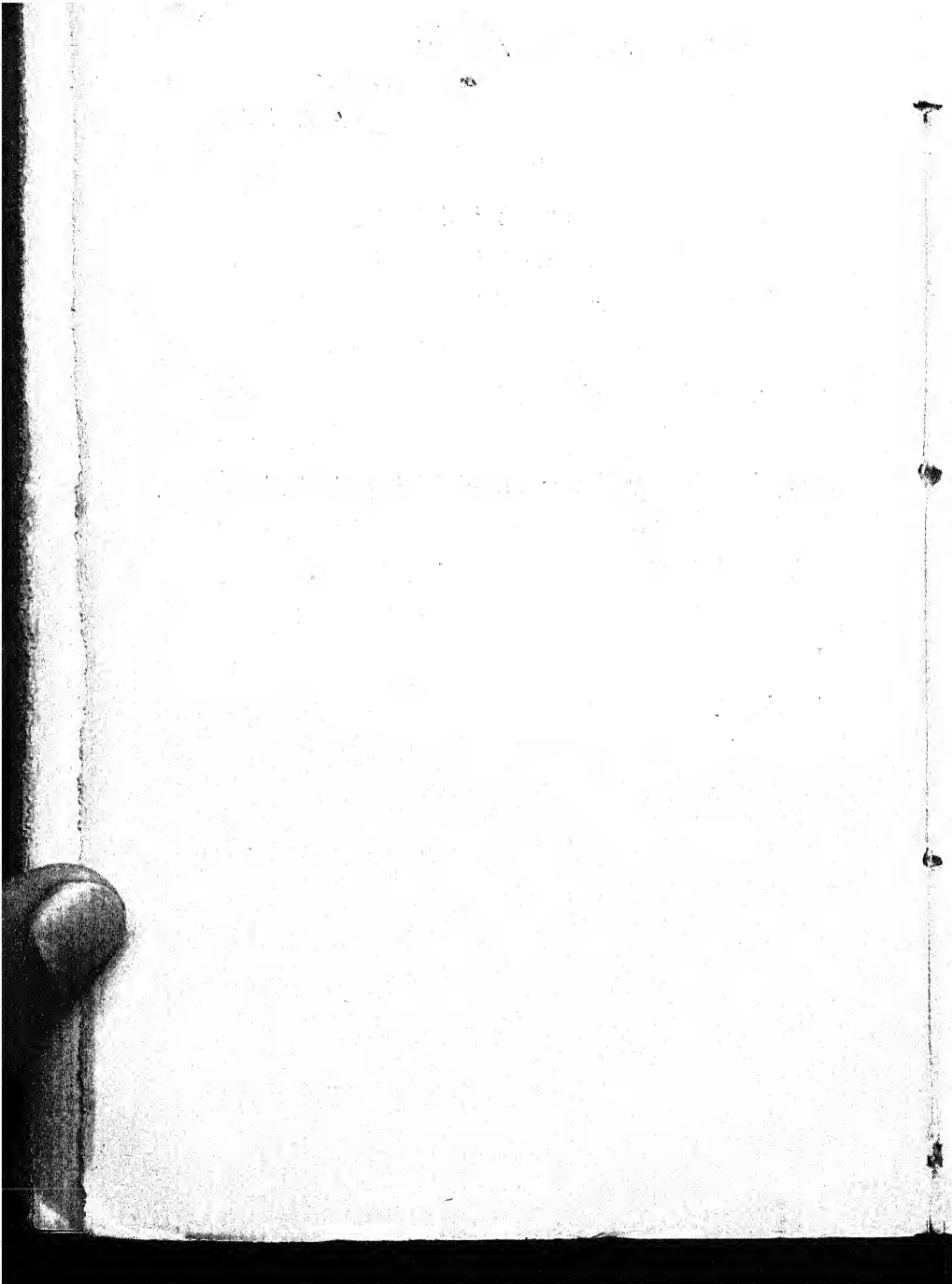
THE UNIVERSITY,
LUCKNOW.

Oct. 1, 1935.

V. SHIVA RAM

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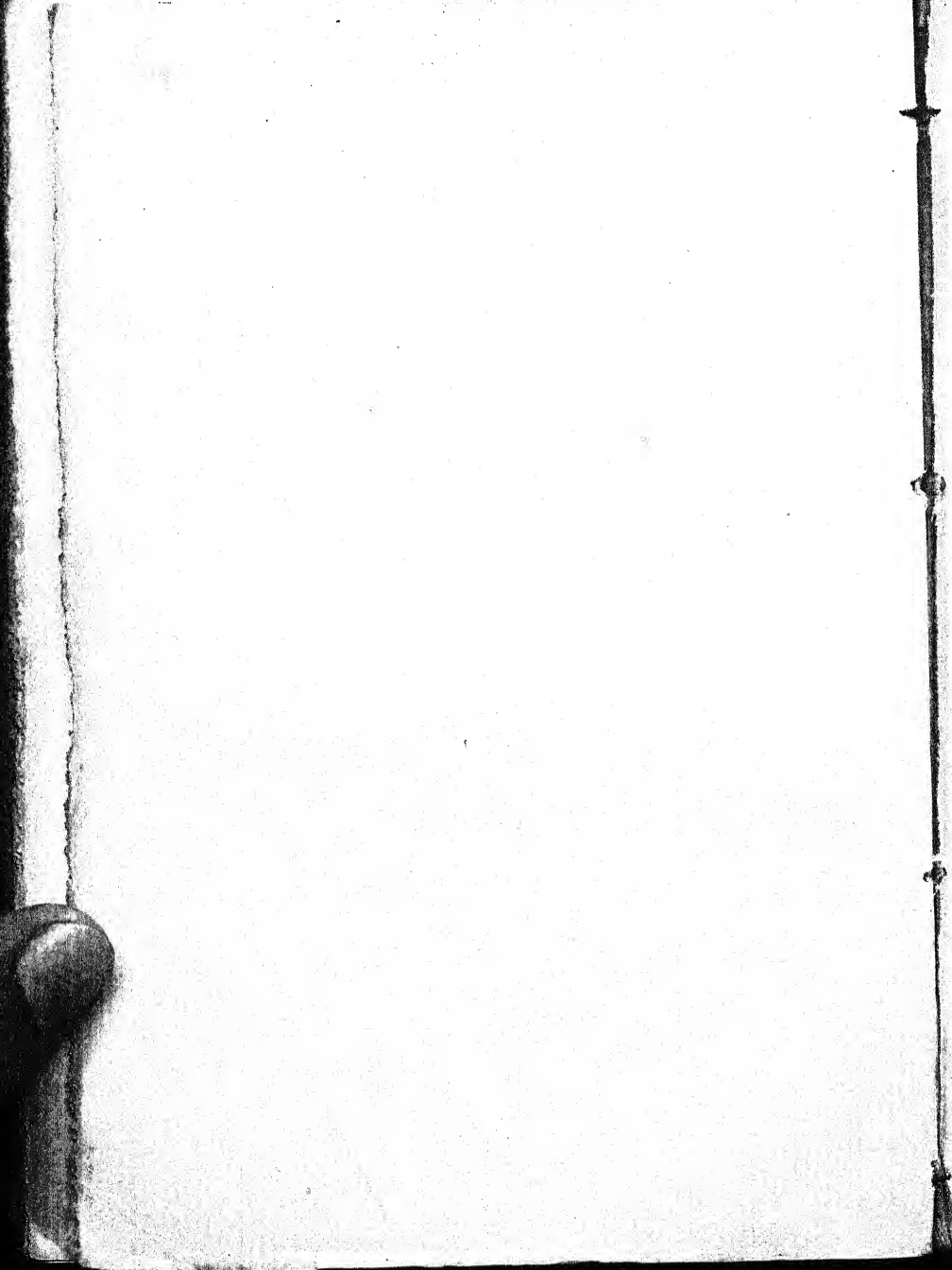




त्यजेदेकं कुलास्यार्थं ग्रामस्यार्थं कुलं त्यजेत्
ग्रामं जनपदस्यार्थं आत्मार्यं पृथिवीत्यजेत्

Dedicated to

The Honourable Mr. Justice
BISHESHWAR NATH SRIVASTAVA
WHO IS AN EXAMPLE
TO THE YOUNGER GENERATION IN INDIA
AS
an ideal Citizen in the Greek sense
OF THE TERM



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CHAPTER I

MEANING, SCOPE AND METHOD OF CIVICS

Knowledge when studied in a systematic way is termed *science*. Knowledge is, however, so vast that in order to grasp and assimilate it, it has been classified in many ways, the most important of which being its division into physical sciences and social sciences. Here we are concerned with *Civics* which is only one of the many social sciences, for example, politics, ethics, economics and history.

Civics Defined.—Generally speaking, social science deals with the study of man as a social being, or as a member of organised society. Membership of society, again, takes into account the manifold environments which influence man's life. And *Civics*, of all the social sciences, deals with the study of man in relation to the various groups and associations with which he comes in contact, or of which he finds himself, either by choice or by incidence of birth, a member.

The word *Civics* is derived from the Latin word *Civis* meaning citizen. And as citizenship involves the association of man with political, religious, social, and economic groups, we have to study all these in so far as they affect the life of the individual in

order to understand the subject. Civics may, therefore, be defined as that branch of social science which deals with the study of the life of the individual as a member of several human associations, like the family, the social groups, the church, the political society or state.

Utility of Civics.—It is concerned with the rights and duties of the individual as a member of these several associations. It is, for this reason, an important social science enabling a man, as it does, to understand how he should act towards his family, his neighbourhood, the village or town, the district, the state, and finally towards humanity. Hence Civics is the most important branch of human knowledge and, as such, it deserves very careful and intelligent study. A man ignorant of civics may be compared to a soldier without military knowledge or a teacher without training in the principles of teaching. It is only when we widen our sympathies towards the several associations we are concerned with, that we can play our part well as citizens and take due share in the amenities of life which result from the fact of our citizenship. It has been experienced that persons who do not understand how they should behave towards the many groups they move in, do not benefit to the same extent as those who know well what rights and duties they are endowed with. Often times even educated persons commit mistakes and are deprived of the advantages of society if they do not know what they should do or are allowed to do. They also do not succeed in helping others as much as they would like to do. For

example, the 'rule of the road' enables people in a crowded street to move without being injured. A breach of this rule often results in serious consequences. It is, therefore, the duty of every good citizen to follow the rule by himself as well as ask others to do the same. The municipality in a town is instituted to make available all the amenities of a happy and comfortable life. Light, sanitation, elementary education, wide and clean thoroughfares and a few parks in the centre of the town, all go to make citizens happy, healthy and wise. Yet those who do not care to watch, criticise (when necessary), and help the city-fathers to discharge the functions entrusted to the municipal board are guilty of indifference to their own good. Again, the right to vote, whether exercised for electing representatives to the national legislature or to the local board, may not appear to be very valuable to an ordinary and unintelligent or indifferent citizen. Yet, that very right if not exercised properly and with due care may result in the making of bad laws which ultimately become burdensome. This kind of indifference in a citizen is described as lack of *civic sense*. It is the business of civics to develop in the individual the true civic sense and thus enable him to take his proper place in the several associations with which his happiness is bound, be these associations formed with his consent or be they natural.

Civics aims at co-ordinating all the important features of social sciences and giving them a practical bias to enable an individual to become a practical man and a useful member of society. It criticizes but

with a constructive and beneficial purpose in view. It synthesises in order to produce practical results. A proper study of civics is, therefore, necessary for producing useful members of society. A person who has intelligently pursued the study of civics becomes endowed with a breadth of vision which is so vital to the realisation of human happiness. It dispels ignorance; it liberalises emotions, and by giving a correct and practical view of our place in human associations it enables us to contribute to the cumulative happiness of society. Civics must therefore, find a fit place in any scheme of education

Civics as a Science.—Our place in the family, the town, the state, and in the church depends on many factors. In taking into account all these factors, civics essentially follows a system, a definite line of study, based upon data and conclusions drawn therefrom. Therefore, civics has to be studied as a science, in some respects similar to even the exact sciences like Physics, Mathematics or Chemistry. Yet, Civics is not perfectly similar to these exact sciences: it is fundamentally a social science based upon social facts and social environments. The main difference between the exact sciences enumerated above and social sciences like ethics, economics, politics and history is that whereas in the study of the former our conclusions are based upon natural, phenomena of which they are systematic representation, in studying social sciences we come across rules of conduct which are not mathematically accurate for they merely represent the experience of intelligent members of society who set these rules

for our guidance. Social sciences deal with the study of man as a social animal: exact sciences treat of the natural phenomena without any reference to man.

Scope and Relationship of Civics.—It is clear from what has been stated above about the nature and definition of civics that it covers all the phases of a man's life in society. Therefore, civics is very wide in its scope and while it is distinct from ethics, politics or economics and history, it is very intimately related to all of them. At the same time there is another important aspect of this inter-relationship of civics with other social sciences, which must be remembered in studying civics. This is the intensely practical nature of civics as distinct from a mere theoretical dogmatisation of social events and environments. And we may very well observe this in comparing civics with other social sciences.

Civics and History.—History is a faithful record of the events that have happened in the past in the life of the human race. It is the business of the chronicler to place before the present generation a true representation of the activities of various peoples in the world, without, at the same time, offering partial opinions. This is a mere theoretical work which enables men to turn the pages of past records and know what their forefathers had done. The present life of us all cannot wholly ignore the influence which the past appreciably, though imperceptibly, exercises on the course of our habits and ways of living. Civics takes into account, to a certain extent, the past activities of society in order to draw lessons

for, and to mould the life of, the present generation. That is; civics brings together practical elements of history to make them serviceable for the benefit of the generation now living and also for those yet to be born. History may, and does, very well describe the ruthless butchery of wars and the continuous mutual animosities of races and nations, but civics ignores these factors and only utilises the past achievements of men to enable the present generation to live more happily by not repeating the mistakes of old. To this extent, therefore, civics is partly built out of history and is thus intimately associated with it.

Civics and Geography.—Geography teaches us the conditions of the soil, climate, and other natural environments of a country. But we know how climatic conditions, natural phenomena and products of the land influence the course of life, habits and customs of a people and contribute to their happiness. Civics tries to turn the theoretical knowledge of geography to do service to men. To that extent civics is also related to geography.

Civics and Economics.—Economics may briefly be described as a social science which deals with the study of society in relation to the production, distribution and consumption of material wealth. It collects data and furnishes conclusions which enable people to so arrange their productive efforts as to achieve greatest material comforts for all classes of them. Happiness of society does, indeed, depend very largely, but not exclusively, upon the possession of wealth. Poverty compels people to degenerate

into leading an ignoble life and sacrificing all noble sentiments. The saying *bubhukshitah kim na karoti papam* (what sins a hungry man would not stoop down to do!) is really true. In a country like India, where more than seventy percent of the people depend for their livelihood on agriculture, no efforts made for improving the lot of the agriculturists are too great. The indebtedness of the peasant proprietors in this land is so great that a special branch of rural economics has been developed in order to survey the economic factors relating to Indian village life. Improved methods of agriculture, rural sanitation, better means of transport to carry agricultural produce from distant villages to the markets, greater facilities for cheap and timely supply of water for irrigation purposes, all these fall within the scope of economics. The constant struggle between the capitalists and labourers, resulting in a demand by the latter for higher wages and longer leisure hours, is directed towards adjusting the means of production in such a way as to improve the lot of the poor labourers. Yet, civics cannot ignore the material comforts of men if it seeks to make life happier. Hence it borrows from economics a part of its scope to increase the prosperity of the people and secure to the citizens more material comforts. Civics and economics are, therefore, inter-related to a certain extent.

Civics and Sociology.—Sociology is a very vast science dealing with various phases of society, cultural, religious and racial. Some of these constitute another branch of social science called

anthropology. A study of these is necessary to understand society in its manifold activities, and civics treats of some of these elements to use them for the betterment of individuals. Culture plays an important part in the development of race. And to produce a better class of citizens it is necessary to develop in them finer sentiments which are based upon a high type of civilisation. Sociology describes the customs, good as well as bad, prevalent in society; it also tells us how people live among themselves. It is a part of civics to teach us to eradicate the evils in society, do away with the bad customs and replace them by good ones. In doing so, civics covers a part of the field of sociology, but it does so with a practical and definite aim, *viz.* the happiness of men in their relationships with the family, the clan and the tribe.

Civics and Ethics.—Ethics deals with morality and the relationship of man with God. It is concerned mainly with development of the inner self of man. People form some associations, religious they are, to perform worship of God. Hence ethics too is a social science. The moral development of men is so necessary for the realisation of social happiness that civics has to take into account the essentially moral order. If a society is to prosper, it must be composed of citizens who do not overlook the moral side of life. Then and then alone, that is to say, by a proper adjustment of moral and material well-being, we can have a really happy and prosperous society. But here too one has to remember that ethics is theoretical while civics is definitely practical, for it so conceives

of true citizenship as to develop in men the higher moral sentiments which influence their daily life as members of society. The outward manifestations of men's activities do reflect their moral inner nature. And civics aims at refining these finer feelings of the inner nature to produce greater contentment in society, particularly in the smaller and elementary associations like the family, the neighbourhood and the clan.

Civics and Politics.—Politics is the science of government. It deals with the organisation of men in a political society. It describes the machinery of government by which the organised society is ruled or rules itself. Man is a political being; he cannot live in an organised group; he must formulate a policy to guide the administration of that political association, and set up a definite machinery for the conduct of that policy. And politics is confined to a discussion of that machinery in all its branches and working. Civics, as we know, is concerned with producing a better class of citizens and as such it must also consider the ways and means by which they are governed as a political body. How laws are made and executed, and how justice is administered, what facilities government must make available for citizens, all these factors profoundly influence the course of society. But the scope of politics is narrow and limited, whereas that of civics is very comprehensive. Both taken together constitute an important branch of human knowledge. Civics is sometimes considered to be elementary politics. This is true, but it does not indicate the whole truth. For, civics,

while covering almost the whole field of practical politics, is much more than politics. It deals with other sides of human society as well. Civics prepares better class of citizens to work politics, that is, to conduct the administration of the society organised as a political association. In other words, civics aims at creating the right type of men for composing the body politic. And politics discusses the ways and means by which that body conducts its administration. Both are, therefore, very much inter-related; they supplement each other. It may also be said, with certain reservations, that civics is the hand-maid of politics. Civics prepares the proper field and men for practice of political principles.

Method of Civics.—We can now easily realise how civics is the most important of all the social sciences, so far as their practical utility is concerned. It has for that reason to be studied methodically and carefully. It has for its aim an ideal and beautiful life; it is for that reason an art. It collects facts, analyses, synthesises and co-ordinates them to arrive at systematic conclusions, therefore it is to be treated as a science.

Every citizen must acquire considerable sympathy in order to create that bond of union with his fellow-men which is necessary for living a comfortable life. Co-operation is the very soul of an organised life; without co-operation no association can perform the functions for which it exists. Civics also needs for its study intelligent thinking and a practical turn of mind. All that history, economics, politics and other

social sciences teach us is given a practical bias by civics. Civics does not rest content with a mere theoretical enumeration of the principles of human life. It aims at a practical application of those principles. The application needs intelligent thinking, drawing useful lessons from the past, fitting them in with the present and adjusting the present with the possible needs of the future. Thus alone can human life become happy, by avoiding mistakes and using all that is noble and great to the service of mankind. A study of civics also needs imagination which enables a citizen to think of new ways and means to apply human energy for the betterment of his family, neighbours, clansmen, and the state. The energy we require here is thoroughly constructive and has to be used with a system, beginning with the nearest associations and gradually extending towards the distant ones. Hence the study of civics must follow a method so as to give us that approach to human service which gives to the self and the associations a corresponding share of importance in the scale of human development. Such is the practical and scientific method of civics which teaches us the basic unity of human beings.

CHAPTER II

MAN AND HIS ASSOCIATIONS

Man is, by nature and necessity, a social animal. He cannot live all alone; he must seek a few others of his ways of living so that he may *live*. The story of Robinson Crusoe, an example of an abnormally solitary life, itself presupposes the existence of society wherein he had already learnt everything that he practised in that lonely island. From whatever point of view we look at man's life, we must admit that he has to seek the cooperation of other men in order to attain to the full stature of human life and development. He is endowed with natural faculties which cannot manifest themselves in proper manner unless he has the necessary scope of society. The mere fact and manner of man's birth proves how the development of human society, that is the production of human species, is impossible without cooperation between human beings. After the birth of the child, there arises the immediate necessity of nurturing him, then educating him and, finally, enabling him to get 'a start in life'. In his turn, again, he repeats the process and acts as those responsible for his life had done. Thus grows human

society, from day to day, from generation to generation.

Forms and Functions of Associations.—When we examine, more minutely, all stages and forms of an individual's life, from his birth up to the day of his death, we find him connected with many a human association, some large others small. Each of these associations plays a definite part in life, contributing to the happiness of man in various ways. And it is often very difficult to evaluate exactly the importance of these associations. But for an intelligent and detailed study of human associations, we may roughly classify them into two groups, *viz.* natural or compulsory associations, and artificial or optional associations.

Natural associations are those which existed even prior to the birth of the individual and of which he becomes a member in spite of himself. The moment the child is born, he finds himself a member of some of these associations, *e.g.* the family, the clan, the state. As the child grows and his sense is developed, he finds it to his general advantage to join some other associations already in existence or to establish new ones to attain certain objects. Membership of such associations, like the club, the church, etc., is not compulsory; it is optional. The more energetic an individual, the greater the need for him to form associations which are not natural but are brought into existence with the advancement of knowledge and the extension of sympathy.

Between natural associations and man-made associations, there are other differences as well in

addition to the nature of membership. Natural associations are necessary for the very existence of man, whereas other associations are formed for the sake of convenience and better ways of living. The former, being based upon birth, have been in existence ever since the beginning of the human race, and the latter have been formed from time to time as civilisation has advanced. Natural associations have definite and limited functions which are innate in human nature; other associations have varied aims which differ from place to place and perform functions of an optional character.

Apart from these marked differences between the two kinds of associations, there are obvious similarities between them. All of them pre-suppose the social nature of man. They are all based upon the fundamental unity of human nature. Cooperation and sympathy are their foundation. In the one case, the cooperation is essential for the very continuance of human species, in the other it helps to make life more comfortable and useful. All associations secure certain rights and privileges to their members in return for the duties which the members have to perform. Of these rights and duties more will be said later.

✓ **Natural Associations—The Family.**—We shall first study the natural associations, for they have been in existence ever since the creation of man. Among these the family is the first and the most essential. Every child owes his birth to a mother and a father, and these three at the least, must form a family, though most families are much larger.

The bond of union between the child and the parents is natural love which exists in their hearts and can better be appreciated than described. The conjugal relations between husband and wife are not meant for mere sexual pleasure. The very continuance of the human race depends upon these relations, and the birth of a child to a couple is hailed as a divine blessing and an event of the greatest importance. The parents nurture the child ; they undergo all hardships to provide comforts, according to their means, to the babe. The rich and the poor, all alike, love their child and make indescribable sacrifices to see him growing well. When the child grows, effort is made to give him education. Thus, by slow stages the couple gets a young man, their offspring, the hope of their old age, and the heir to their property. The son, too, in his turn, loves his parents and tries to please them, and, when they have grown old, to serve them and partly repay them the debt he owes them for their care of him during infancy. Such is the golden link and love between the child and the parents. There are,, however, cases of children going against their parents and instead of giving them comfort, neglecting them in their old age. But such cases are neither common, nor do they represent the conditions in a normal family.

Many families are larger. A couple begets several children, sons as well as daughters. In such families, the bonds of love and sympathy are many-sided. Not only there is the love between the child and the parents but also between brothers, between sisters, and between a brother and a sister. Brotherly

affection is proverbial. When we begin to love a friend most, we call him brother, that is one who is as dear to us as another child of our parents. Thus our blood relationship extends to many houses comprising a big family.

The family is the basic unit of human associations, from whatever standpoint we may care to study it. The self-denial of the parents and the comforts given to the child present the best example of real altruism and selfless love. It is in the school of family that the child learns the rudiments of social life in its various aspects. He sees here how he is indebted to his superiors. He respects and obeys them, and indirectly learns how to command when he grows old and his turn comes. He is subjected to strict forms of discipline—a discipline tempered with real sympathy, and not full of cruelty or rigidity. Verily, the child is the father of man; what the child learns in his infancy, say during the first five years, decides the future man. The family teaches how to eat, talk, dress and live among men. The family is the great factory that transforms the child into the real man.

The earning members in the family do all labour in order to procure bread and butter, and other material things, not only for themselves but also for other non-earning members. While the young and the capable are earning, the children are getting education and the old men, now no longer able to work due to age and infirmity, advise the younger ones how to behave, work and live. Thus the family presents itself as an economic unit of prime importance

and brings together the minds of persons of all ages, which react upon and influence each other and finally result in the proper adjustment of differing temperaments. By helping one another in times of need, the members learn the first lessons in charity and mutual sympathy. The family is also an administrative unit. All members submit to the unwritten rules of conduct peculiar to it, and the eldest male generally acts as their recognised ruler or guide. He decides the family disputes and maintains the old tradition. But he is not an autocrat; he takes a sympathetic view of the needs of his people and tries to keep harmony between them. Such is the day-to-day life in a happy family—a state in miniature.

Several things are necessary to make a family happy. Firstly, the family must be educated. Education enables the members to understand their respective duties, to have a correct outlook of family life and also to create those finer feelings which distinguish a good family from a bad one. The home is the temple wherein peace ought to reign supreme, and it is only education which creates in people the feeling of 'give and take' without which there is no proper adjustment of temperaments. Education enables the individuals in the family to respect the elders, love the children and live as cultured persons. It dispels ignorance and refines the very mode of life. Secondly, the family must have enough material wealth. Poverty breeds evils. If the members of a family have enough to build a neat and sanitary house to live in, to dress themselves, to eat well, to spend on the proper education of the children and other functions,

and to lay aside something for hard times and unforeseen circumstances, they have a fair chance of leading a happy life. Thirdly, there must be the necessary 'urge to work'. As already said, the family is an economic unit, therefore all its members who have reached the necessary age must work to produce wealth. Indolence of one or two, in a large or joint family, may be tolerated, but this toleration is ultimately harmful in the best interests of the family. The best family from the economic point of view is the one which has no parasites in it. Fourthly, the members must acquire the habit of accommodating each other in order to contribute to the ultimate good of the family, that is, the good of themselves. Where these conditions do not obtain the family is not happy. It becomes not a temple of peace but a field of constant conflict, presenting conditions in which life is intolerable. If the husband and wife are not educated, they would not care for the education of the children, and the family will become a group of persons who are unable to understand and work for each other. There may be seen such unfortunate families, and life in them is a source of constant misery. If the family is without the necessary material means to live happily and comfortably, it will have to face difficulties at every step. Mere culture cannot provide subsistence. Wealth is a great necessity. Poverty degenerates individuals and nations. If a joint family happens to possess some young but indolent persons, they will retard its economic progress and lead it towards poverty and ruin. Economic self-sufficiency is the sign of a

prosperous family. And, finally, if the individuals in the family do not have the necessary feeling of sympathy and a will to adjust their temperaments and resolve their differences, whenever these arise, they cannot benefit by their cooperative efforts in the house.

The clan, or Tribe.—It is often said that blood is thicker than water. The proverb may best be appreciated in studying the bond of union existing in a family. The closer the relationship, the thicker the blood, that is, the greater the sympathy between people. Further extension of a family, in a few generations, results in the formation of a clan or tribe. We notice in clans and tribes the union being based upon blood relationship, however distant it be. All members of a clan trace their descent to one single couple. The crimson thread of kinship runs through them all, and this sentimental relationship ties them into a natural society which prides itself in being one community. History affords innumerable examples of families and tribes being ruled by one individual for the simple reason that they consider themselves as a unit of society which must have oneness of purpose. Similar customs, forms of worship, and sometimes even similar dresses, are the outward symbols of tribal unity. When one has to make one's choice in favour of one individual or another, for marriage or other relations, one generally prefers one's own tribesman. Such is the feeling that knits together several families that compose a tribe or clan.

✓ ***The Village.***—Generally a clan prefers to live in one compact group and establishes a village of its

own, which takes its name after the clan, though further expansions spread a big clan over a larger tract and in many villages. It admits to the village membership men of other tribes as well, but the tradition remains strong and the village continues to belong to the clan. Such examples may often be seen in any country including India. Common loyalty to the village forms the basis of union among the villagers, though this loyalty is not as strong as that to the family or the tribe. Neighbourhood results in the creation of common interests, economic, cultural and others. Problems like elementary education, village sanitation, village thoroughfares and markets, all alike enable fellow villagers to help each other. A village is the smallest administrative unit in the large natural society, the state, which we reserve for a more detailed treatment in a separate chapter. The village is also a self-sufficient unit economically. All minor disputes are settled by the eldersmen, the recognised leaders of village life. Men of all important professions may be seen in a village, supplying all needs on the spot. The weaver, the carpenter, the blacksmith, the washerman, the potmaker, the priest, compose the village population. Each village maintains its smaller thoroughfares and amusements. It creates in each individual an attitude of mind, which is termed village loyalty.

✓ **Man-made Associations—Religious Associations.**—Apart from the natural associations discussed above, including the state, man forms other associations too wherein the bond of union is created purposely to serve certain particular ends. These may

be of various natures, religious, economic, cultural, professional and recreational. They may be distinguished from natural associations by their freedom of membership, narrow and limited aims and nature of working

Some of these associations are religious, which may be described by the general term—the Church. From times immemorial, people have collected together for common worship in one place and in one manner. Examples may be seen in ancient history of Greece, Rome, Egypt, or India. Whether it was superstition or some other cause that formed the foundation of religion, it is undoubtedly true that the human race, at a very early stage of its career, became religious-minded. Those who worshipped a common god jealously guarded their temple and in this way they became closely associated together. True, religion concerned the inner life of the individual by establishing a relation between soul and God, yet when once people came together to worship in one form and place, the sentiment of common religious interest grew so strong as to permeate all secular activities. People have attached so much importance to religion as to embark upon religious missions to convert others to their own form of worship and faith. Common religious loyalty has ignored differences of birth as well as wealth and created catholic feelings too deep to be otherwise superseded. Even in modern days, the twentieth century, when religious toleration is the principle of every political state, and when other interests and factors have acquired very great importance, religion has not

diminished in its influence as a potent, unifying bond.

Economic Associations.—Men have formed distinct associations on economic basis too, whose avowed object is to serve the economic interests of the community. Commerce has brought about an identity of interests between persons otherwise divided. Chambers of commerce are established to look after trading interests of people. Trade unions spring up to safeguard the interests of those who have common problems to solve. We learn about labour unions, mill owners' associations, railwaymen's federations, all aiming at the general welfare of their respective members. The acute problem between the capitalists and labourers has also resulted in the establishment of employers' associations and labour federations. These have, in the last decade, assumed an international importance and the League of Nations, in its special section, the International Labour Office, has taken up the task of solving the problems that equally affect the governments, the employers and the labourers.

✓ ***Vocational Associations.***—There have also been established vocational associations. Members of the same profession now form their own unions to advance their common interests and solve problems peculiar to those professions. Teachers' Associations, Postal Employees' Associations, Cloth Dealers' Unions, and the like, are examples to illustrate how people organise themselves on vocational basis. In such associations, differences of religion, family and community do not count. A professional association may include

in its membership Hindus, Muslims, Christians, Sikhs, Jews, believers or non-believers. Co-operative and organised effort is their weapon and similarity of interests is their binding link. An individual who prefers to join a professional association does so only to achieve certain objects of his profession, and to that extent he owes it loyalty. For example, a medical-man finds that he can not only learn more about the latest developments in his profession but also obtain more rights and privileges by joining a medical men's association wherein, besides the discussion of important researches and methods of treatment, come up matters which vitally affect the interests of the profession. He joins the association in order to strengthen it and be strengthened by it. Therefore, the advantage is reciprocal. The more numerous and widely spread an association the more powerful and useful it becomes. And an individual-member derives greater advantages by joining such an association than by his solitary efforts and undertakings.

✓ **Cultural Associations.**—People organise themselves into associations based also upon cultural grounds. Schools, colleges, universities, libraries and other academic associations are formed with the chief object of advancing knowledge, imparting education and, generally, raising the cultural tone of the community. All these associations are highly catholic in their outlook. They impart knowledge to all and sundry, to members and often to non-members as well, without distinction of religion, birth, wealth or race. Their success is measured by the extent to which they raise the cultural tone of the society so as

to enable it to reap the greatest benefits from progress in science, arts and other intellectual pursuits. Widest scope of work is the aim of a cultural association. It extends over a large area. In most cases that area is not limited. Every school or library keeps, and ought to keep, its doors open to anybody and everybody who conforms to the prescribed rules of conduct, no matter whether he belongs to this place or that. A cultured man is one who knows his self and others well, is sympathetic and liberal in his outlook, and is capable of doing things in the right way. And every cultural association aims at producing such persons. Countries where there is a net-work of such institutions and where the percentage of literacy is very high rank amongst the most civilised, advanced and prosperous nations in the world. It is true that every state must feel it its bounden duty to spread education, but unofficial efforts are equally necessary to supply intellectual food to the children so that they may rightly grow up into intelligent and ever vigilant citizens. But the knowledge which these institutions impart ought to be liberal and practical. All thoughtful people admit that of all the charities that of imparting knowledge is the noblest, because it is absolutely selfless, and by dispelling general ignorance contributes towards making society really humane.

✓ **Philanthropic Associations.**—One of the noblest virtues of men is generosity or philanthropy. It is easy for an individual to benefit himself by acquiring more education, more wealth and other material

comforts. But this is all egoism, while man is not complete without possessing the necessary element of altruism. If the sight of a helpless and poor man cannot touch the chord of sympathy in our hearts, we lack that sense of humanity with which we all seek to adore our inner self. Different persons possess different virtues in varying degrees. Some are highly philanthropic. To them the highest ideal of life is to administer to the needs of the helpless and the unfortunate people in society. They give away their wealth and establish philanthropic associations or institutions, under the management of trusts. Such associations are also formed by many persons combining together, each contributing his mite for mitigating the sufferings of others—to give food to the hungry and the helpless, to rescue those who fall into evil hands and to cater to the general needs of the destitute.

Dharamshalas or Musafirghanas and rest-houses, charitable hospitals, asylums, orphanages and rescue homes, are such institutions through which philanthropic associations seek to render service to society. A few of them are sectarian, but most of them are cosmopolitan and help those who need help. The task they perform is gigantic, but it represents the results of cumulative and organised efforts.

✓ **Recreational Associations.**—Some associations are merely recreational and secure comforts and general means of recreation to members. They are not very extensive in area or membership, yet they perform a very valuable task. A club or an athletic

association collects a few persons who meet together for refreshing their minds and bodies after a hard day's work. These associations are social and non-sectarian. They create feelings of comradeship and sympathy which react also on other aspects of life to knit society closer together. People pay subscriptions, raise donations and establish means of amusements, hold dinners and thus try to move together in an informal and friendly manner. These meetings tend to create a feeling of fellowship.

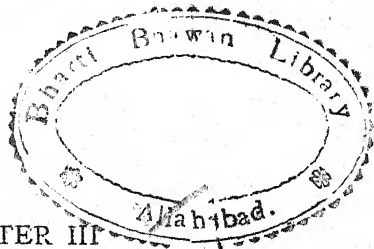
What Human Associations Achieve.—We have surveyed, in brief, some of the human associations into which individuals arrange themselves to give expression to their co-operative and organised efforts for deriving mutual advantages. And, as we have seen above, they are based on different aspects of human life, religious, social, economic, recreational, philanthropic or cultural. Through these associations the individual gets an opportunity to develop his self and realise the aims of life. Each association serves some particular object and in return gets the loyalty of the individual. Generally an individual is free to join as many associations as he likes, and, in fact, the amount of co-operative effort he is capable of putting in, is measured by the range of his sympathies and membership of the groups. His joining one group is not inconsistent with joining another. The totality of the individual's social life represents the adjustment of his loyalties to the various associations through which he expresses his contribution to society. To worship God he joins a Church, to acquire knowledge he joins

a cultural association, to earn his livelihood he takes up a profession, to help others he belongs to a philanthropic association. To lead a peaceful and secure life he works in a political body. To each of these associations, which are independent of each other, he offers a separate loyalty and he thus enjoys privileges which the associations guarantee. As the associations supplement each other to make human life complete by providing channels through which man's different virtues and activities are expressed, the different loyalties of the citizen do not conflict with each other; in fact, they adjust themselves within the framework of society to express what citizenship connotes.

All these associations depend, for their success, upon the individual's will to co-operate with his fellow-men. Some of them are limited to distinct areas, like the village, the district, and the state. There are others which do not recognise any territorial limits, for example, the family, the clan, the church, or the caste association, but they are narrow because of being sectarian. There are others, again, which neither recognise territorial limits nor discriminate between individuals on grounds of faith, race or birth. Such associations are either cultural, philanthropic or highly cosmopolitan and social, like clubs, schools and libraries. A true citizen would so arrange his life as to contribute most largely to the good of the society in order, ultimately, to reap the advantages of cooperative life and mutual help. Thus alone he develops his self and finally feels to belong to the largest human association which aims at

achieving the ideal of internationalism. In his every day life the individual feels that his activities must conform to the various standards set up by the associations to which he belongs. He observes different but definite rules of conduct which represent the mode of life the associations prescribe. Sometimes within one large association there may be observed smaller units or groups and sub-associations. These generally enjoy autonomy and yet feel subordination to the parent body at the top. In such cases the citizen has to adjust his activities in a still more complex way so as to realise the ultimate aim.

Human associations, with different aims and varying bonds of union, represent the basic unity of human life. They demand of the citizen the performance of certain duties in return for the rights they secure to him. This adjustment of rights and duties sums up the basis of men's interdependence.



CHAPTER III

CITIZENSHIP, RIGHTS AND DUTIES.

Citizen Defined.—The word 'citizen' literally means a resident of a city or town. Here, in the political sense, it has a much wider meaning. It is neither wholly connected with residence nor it entirely ignores it. It was in the ancient Greek city-states that a citizen was the person who was resident in the city-state and was, also, in the enjoyment of rights and privileges guaranteed by the state. As a Greek state was but a city, the word citizen denoted, and correctly, the person who enjoyed all state rights. We all know from Greek history that each city-state contained within itself two classes of persons, *viz.* those who were free men in the enjoyment of rights and those who were slaves with no rights. The former alone were called citizens and the latter were mere slaves who were allowed to live in the city so that the free men might use them for service of every kind. These slaves had no rights and privileges in the state. Hence, Aristotle defined citizen as a person "who has a right to share in the judicial and executive part of Government in any city... A city is a collective body of persons, sufficient in themselves to all the purposes of life". Every Greek who acted as a juryman and was a member of the general assembly was also a citizen. This definition of citizen was

narrow as it excluded all slaves and, in many states, women too. Slaves were considered to be mere tools for securing comforts of a 'good life' to the citizens. In fact, slavery was the real economic basis of the ancient city-states and this accounted for the narrow view Aristotle took of a 'citizen'.

In Rome, however, the term citizen had a different meaning. In the brilliant period of Roman history, any person to whom the metropolitan city extended the privilege of enjoying rights of Roman citizenship, whether that person had ever lived in that city or not, was considered to be a citizen. The Romans extended the rule of the metropolitan city over a large adjoining, or in certain cases even distant, district or territory. Therefore, the Romans whose state was not confined within the four walls of the city but included a large empire, took a wider view of citizenship than the Greeks.

In the modern days, we use the words 'citizen' and 'citizenship' in a much wider sense. We conceive of a citizen as not necessarily a resident of a city but as a member of a nation-state, who is in the enjoyment of all rights, civil and political, guaranteed by the state to which he owes allegiance. Modern states are so extensive that each of them consists of a large number of cities and a yet larger number of villages. In the case of India, in particular, the proportion of town-dwellers to villagers is very small; over ninety percent of the people live in villages. Yet all villagers are citizens of India. To confine Indian citizenship to residence in a city or town is to deny to the vast rural population the

rights of citizenship, and such a denial is, evidently, against civic life in India. In fact, the problem of Indian civic life is so intimately connected with rural life and is, therefore, so vast that the future prosperity of this country depends mainly upon the prosperity and happiness of the village people. It is the backwardness of the Indian villages, in education, sanitation, mode of living and general economic life, which keeps India far behind other countries of the world. A true civic life consists only in the general levelling of the differences between the various classes of people. (Therefore, in every modern nation-state, citizenship extends to the residents of towns as well as to villagers.)

Aliens—All persons resident within a modern state are, however, not necessarily citizens of that state. In these days of economic interdependence of nations and quick means of travel and transport, there is a general movement of people from one country to another, for purposes of trade, study or sight-seeing. These foreigners resident in a country do certainly enjoy certain rights but not all the rights which are enjoyed by the citizens of that country. The foreigners are not called citizens of that country; they are aliens who enjoy all civil rights but not political rights. They are guaranteed security of life and property and protection by the law courts. They do not enjoy the right to vote or to occupy offices in the state. It does not, however, mean that the aliens in a modern country are like the slaves of ancient Greek city-states. The slaves or non-citizens in a Greek city-state were considered

to exist for the happiness and service of the citizen class. They were the property of the free men. But the aliens in a modern state are also free men, though not enjoying all rights of citizenship.

Citizenship Defined.—Citizenship is, thus, a condition of life which guarantees to the citizen the enjoyment of all the rights, civil as well as political, in the state. This definition of citizenship does also include the rights of the individual citizen as member of the various groups and associations formed in the state, for example, the family, the tribe, the village, the church, and the vocational group. No citizen can keep himself entirely aloof from the general social life which these associations create, for the fabric of a modern state is essentially of an organic character in which the groups play a very important part. And true citizenship is surely not the patriotism of the village or the state alone. It is a sentiment built upon the interdependence and respective importance of all groups. As Prof. Laski remarks; "The structure of social organisation must be federal if it is to be adequate. Its pattern involves not myself and the state, my groups and the state, but all these and their interrelationships". Therefore, a true harmonising of loyalties to all these groups and their due importance depicts the real character of the modern citizenship. An individual who overlooks his obligations to the smaller units within the state and confines his patriotism to the state alone only partially fulfils the obligations of citizenship. On the other hand, one who thinks only in terms of the groups and ignores the state

attaches undue importance to the parts as against the whole. True citizenship means service of the groups and the state, all representing a series of ever widening circles. And a true citizen means one who is a good father or husband, a good villager or townsman, a vigilant member of the vocational association and a true and devoted lover of the country.

Citizenship—How Determined.—We may now study how citizenship is determined in order to distinguish between the citizens and aliens in any country. There are two main principles whereby citizenship may be determined, *vis.* by the incidence of birth (*Jus Sanguinis*) or by the incidence of residence (*Jus Soli*). The oldest principle, adopted by the Romans and recognised by the Roman Law, is *Jus Sanguinis*. It is now followed in some of the countries on the continent of Europe, *e.g.* Austria, Italy and France. According to this principle, all children born of parents who are citizens of a state, that is, who owe allegiance to the state, are *ipso facto*, by virtue of their parentage, citizens of that state even if they are born in a foreign land and are not resident within the territory of the state. For example, if a child is born to an Italian couple in India, he will be considered, by the Italian state, as its own citizen. But if a child is born to an Indian couple in Italy, the Italian law will not recognise him as an Italian citizen, for Indians resident in Italy are foreigners in Italy, whose children must also be treated as foreigners. Such is the system prevailing in Italy.

Other states, for example, Argentina, have adopted the *Jus Soli* principle according to which citizenship is determined by the place of birth. If a child is born to an Indian couple in Argentina, he will be treated as a citizen of Argentina. But if a child is born to an Argentine couple in India, he will be denied the rights of Argentine citizenship.

✓ On the other hand, states like England and America have adopted a mixed principle to determine the citizenship of a child. So far as the children of their own citizens are concerned, they follow the *Jus Sanguinis* principle. No matter in whatever part of the world a child is born to an English couple, he will be treated, in the eyes of the English law, as a citizen of England. But with regard to the children of foreigners in England, the nationality is determined by the *Jus Soli* principle. That is, if an Indian couple gets a child in England, the latter will acquire, by the fact of his birth in England, the rights of English citizenship.

These various principles sometimes lead to confusion in fixing the nationality, and with that the citizenship, of a child. For example, if a child is born to an English couple in France, he will be an English citizen according to the English law, but in French law he will be a French citizen. This dual nationality of a man often results in serious difficulties to him. Suppose a war breaks out between France and England. Which country has the right to order him to join the army? In order to solve this difficulty, such a man is asked, on attaining majority, to choose one of the nationalities for himself

and give up the other. No person is, therefore, allowed to retain double citizenship and owe allegiance to two different states.

Both the principles *Jus Soli* and *Jus Sanguinis*, have their merits and demerits. The *Jus Soli* principle has the advantage of easily proving a man's nationality by referring to the birth register of the territory he is born in. At the same time this principle seems illogical for if, by an accident, a woman on tour in a foreign country gives birth to a child, he will, according to the *Jus Soli* principle, acquire citizenship of that country, whereas the mother would prefer for him her own nationality. From this point of view, the *Jus Sanguinis* principle appears more reasonable as the child belongs to the same nationality as the parents. But in certain cases it becomes difficult to prove the nationality of the parents.

Citizenship—How acquired.—Thus far we have dealt with the aspect of citizenship which takes into account the determination of a person's citizenship as a matter of course, *viz.* by incidence of birth. But states have also provided for loss of citizenship by their citizens as well as conferment of citizenship on the aliens. Aliens are generally of two kinds, namely, those who temporarily reside in a country, like tourists or students, and those who settle for longer periods in a foreign country, for example, the traders. All these aliens enjoy civil rights in the country of their adoption, *e.g.* the right of protection of person and property, exemption from military service, right to sue persons in a court of law, and

all other personal rights. They are, however, not allowed to vote in political elections nor can they occupy offices in the state or possess any immovable property in the country. They may also be expelled from the country. But provision is made for their acquiring the citizenship of the country of their adoption in one of the many ways. Firstly, a foreigner may acquire citizenship rights by naturalisation which means the conferment of citizenship by a court or administrative officer of the state on the former's complying with certain conditions prescribed for the purpose. These conditions vary from state to state and are not uniform, for no international agreement has so far been concluded to deal with the problem. In England and America, for example, a foreigner may acquire rights of citizenship by a residence of five years. In other countries the term of residence varies. This is called naturalisation and the person concerned becomes a naturalised citizen of the new country.

2. Secondly, citizenship may be acquired by marriage. When a woman marries a foreigner, she *ipso facto* becomes the citizen of her husband's country.* 3. Thirdly, citizenship may be acquired by an alien by holding a government post in the country of adoption. This is allowed in several countries. 4. Fourthly, in some states, citizenship is conferred on foreigners if they have purchased real estate, as is

*Efforts are at present being made by some of the South American states, through the League of Nations, to conclude an international agreement to regulate citizenship of women.

done in Peru. Fifthly, the residents of a territory acquire citizenship of another state when that state annexes the territory.

Generally speaking, all persons who acquire citizenship of a foreign country in any of the above mentioned ways are allowed to enjoy all those rights which the natural born citizens of that country enjoy. But some states reserve certain rights exclusively for their natural born citizens and deny them to the naturalised citizens. For example, in the United States of America, the offices of the President and the Vice-President of the Republic are open only to the natural born citizens. Before 1914, England too withheld certain rights from naturalised citizens, particularly the right to occupy some of the important offices. But the British Naturalisation Act of 1924 has removed all these restrictions.

Citizenship—How Lost.—When a citizen owes allegiance to his state, he enjoys all its rights and privileges. But he loses his citizenship if he acts in such a way as to expose himself to that penalty. If a woman marries an alien, she loses her former nationality and citizenship. Secondly, a person may voluntarily choose to leave his own country for good and settle in a foreign land where he may acquire rights of citizenship after renouncing his former allegiance to his old state. Thirdly, a person loses his citizenship by long absence from his home country. For example, a Frenchman or German loses his citizenship by his continuous absence from home for ten years. Fourthly, certain crimes, like

desertion from the army or other heinous acts for which a judicial court condemns him, deprive a man of the rights of citizenship. In some states expulsion from state service or acceptance of title or order from a foreign state is enough to deprive him of his citizenship. Thus different states have different laws to regulate the conferment or loss of citizenship and no fixed rules can, therefore, be given here to cover all cases. We have herein given some general principles which most states follow.

① ✓ **Good Citizenship.**—The aim of each state is to produce good citizens for which certain qualities are necessary in men. The most important quality of a citizen is public-spiritedness which includes several virtues like “regard for public property, keeping one’s surroundings tidy and clean, mutual helpfulness, co-operation, balanced judgment, readiness to stand up for the rights of others, and willingness to serve on public bodies even at some personal inconvenience.” These virtues aim at the collective good of society and hence exclude narrow-mindedness like communalism and sectarianism.

② ✓ Secondly, in the election of representatives to legislatures and other public bodies, a good citizen must exercise his right of vote with caution and due regard to the merits of the candidates. Selfish considerations must be definitely kept out of the mind.

③ ✓ Thirdly, good citizenship needs self-reliance and self-control. Those who do not labour but try to depend upon efforts of others directly encourage pauperism and idleness. All work must be considered as service to society.

Fourthly, right type of

education is an important element of good citizenship. A state that neglects the mental and moral improvement of its citizens soon loses the very means by which it can raise the general tone of its people. Fifthly, physical development too is an important factor in promoting the right type of citizenship. Good health has rightly been considered as "the foundation of all other goods and the means of strengthening the spirit itself." Sixthly, a good citizen must cultivate thrift which is necessary not only for personal but also for public reasons. A nation that has acquired the habit of saving something successfully combats natural and unforeseen calamities like floods, earthquake disasters, wars and epidemics. In the case of India, particularly, the value of thrift cannot be too much emphasised. Already the country is so poor that a large percentage of the population goes without proper meals, how much more then it is essential that those who have more than what is necessary for their decent living, must set apart a portion of their income to contribute towards national loans and subscriptions. Every state, therefore, encourages by means of Insurance Acts, Savings Banks, Old Age Pensions and Provident Funds the habit of thrift in its citizens. And to these measures a good citizen readily responds. In this way he collects enough for meeting national calamities and also to safeguard against sickness and old age. Seventhly, a good citizen must always be prepared to help the needy and the poor. True, it is the primary duty of the state to arrange the social and political order in such a way as to minimise the chances of pauperism

spreading among the people. But the whole problem is so vast that without private help, state efforts cannot do much. In all states, however rich they be, private efforts largely supplement state measures to solve national problems and to help those who need help. And lastly, a good citizen always respects the laws of the land. All order and organisation in society is regulated by rules and laws and these must be obeyed if the society or state is to discharge its functions efficiently. It is as much in the interest of the individual as in that of the community that respect for law must continue. Sometimes bad laws find a place on the statute book; but in such cases a good citizen must try by proper and constitutional means to change the law. Efforts to change law do ultimately succeed. It is only on extremely rare occasions that bad laws are not timely changed and resistance to the state, with regard to bad laws, becomes as much a duty as obedience to it for all good laws. These are but exceptional cases.

Hindrances to Good Citizenship.—On the other hand, there are certain evils which create hindrances to good citizenship. Of these, the commonest is one's indifference. Those who believe that the good of society can very well be looked after by others sit idle and neither show any active interest in things that promote the common weal, nor do they try to remove the evils existing in the society. Such an attitude of mind, peculiar to all indolent persons, proves fatal in the end.

Another hindrance to good citizenship is self-interest. As already pointed out, all human

institutions owe their origin and success to cooperation between human beings. Cooperation demands sacrifice of certain personal interests by individuals in order to serve the larger interests of the group. Those who look only to their individual gains and ignore the good of the society strike at the very root of human organisations and thus prevent the growth of civic life.

Apart from individual interest, there is yet another interest, *viz.* that of the party or sect, which too hinders the growth of good citizenship. Unless people give up false notions of party prestige—
notions that compel them to do wrong—the larger interests of the state cannot be protected. True, party organisation is a necessary element in modern democracy, yet too much party spirit runs counter to the sentiment of national patriotism. If the party is based upon some known doctrines and useful principles, it deserves our full support, but if it is used merely as a tool to get control of the political machinery in order to gain material advantages to the party members, it is a dangerous institution. A true citizen must, therefore, take good care to see that he does not support a party programme blindly and without reference to the real interests of the state or society. In India, the need for this caution has a significance of its own. The nation appears to be divided into communal and sectarian groups and this unhappy division is pre-eminently responsible for national backwardness. It is the duty of every true citizen of India to minimise these differences and emphasise the points of agreement.

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Lastly, the groups and divisions based upon wealth, creed or castes, also retard the growth of true citizenship by misdirecting the loyalty of the citizen who is made to believe that the part is more important or greater than the whole. Caste divisions and religious schisms are a great hindrance to nationalism, for they keep society perpetually divided into irreconcilable and hostile groups.

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To promote good citizenship all hindrances to it must be removed. For this purpose it is necessary to inculcate amongst the people certain virtues. First of all, education of the right type must be made universal. The most dangerous society is an ill-informed democracy. Unless education removes ignorance and raises the general tone of the community, people cannot fully realise their responsibilities to the various groups to which they belong.

2
Sectionalism must be eradicated and a proper sense of public-spiritedness allowed to prevail. To do this all modern weapons of educating people have to be fully used, viz. the press, the platform, the church, the clubs, and the educational institutions. Due emphasis must be laid on national unity, cooperation, social service, justice, order, peace and international understanding.

Rights and Duties.—Any person owing allegiance to the state and admitted to its citizenship enjoys the rights which the state guarantees in return for the corresponding duties he is required to perform. Rights and duties are, therefore, correlated to each other. Without the one the other cannot exist. I cannot expect to enjoy a right unless I am prepared

to perform my duty. My duty implies that I recognise a similar right of my neighbour and act in such a way as not to infringe his right. This is the basis on which the organisation of society is built. The citizen must pay taxes to the state if he wishes it to maintain police for the protection of his person and property. Examined closely, it will be seen that to each right is attached a corresponding obligation or duty and both have, therefore, to be studied simultaneously.

Rights and duties are meant for citizens in a state, or members of groups. But citizens can neither enjoy rights fully nor perform their duties efficiently unless conditions of living are such as to permit their growth as perfect citizens. Briefly described, these conditions are included in the two terms, liberty and equality.

Liberty and Equality.—Liberty or freedom is used in a very wide, but often times in a misconceived sense. Correctly speaking, liberty means the maintenance of those conditions of life in which men enjoy the fullest opportunities to develop their *best selves* without undue and unnecessary interference from outside. Liberty is, thus, a positive condition of life and does not merely mean the absence of *restraint*. At the same time it must be understood that the state guarantees liberty so that the individual may, by realising his best and constructive aims, contribute to the cumulative good of the society. By integrating the individual goods of all citizens we get the good of the state, for the interests of the state are meaningless if they are also

not the interests of the citizens. But the state cannot guarantee liberty to the citizens without prescribing certain rules of conduct which all citizens must obey. These prescribed rules should not be considered as unnecessary restraints which might invade the liberty of the individual. On the other hand, these rules are conveniences which experience has shown to be essential to promote right living. Therefore, compulsory obedience to these rules does not mean loss of freedom. Prof. Laski aptly remarks : "Wherever there are avenues of conduct which must be prohibited in the common interest, their removal from the sphere of unrestrained action need not constitute an invasion on liberty". This does not, however, mean that every prohibition is justified, for some governments may, under the plea of promoting common good, issue unnecessary prohibitions. Only those minimum restraints are justified without which conditions of liberty for all cannot be maintained. A restraint becomes an evil only when it really stunts moral, spiritual or political growth. And liberty without the necessary restraints means chaos, for under those conditions evil-doers cannot be checked from invading the freedom of others. Therefore, however paradoxical it may seem, we must realise that the state must lay down certain rules and laws which citizens must obey in order to attain to their full stature by giving full play to their constructive faculties.

Similarly, equality is essential for the growth of good citizenship. Every modern civilised state treats all its citizens alike. Without such equality

men cannot enjoy liberty. But this equality must be understood in its correct aspect. Equality does not mean perfect identity of treatment. It does not warrant that a scientist and a brick-layer must get same wages, same kinds of recreation, and so forth. Absolute equality of this kind is practically impossible in a human society. From their very birth, their nature, all individuals are not perfectly alike. Some are born with a keener intelligence while others have a stronger physique. Some have a natural aptitude for learning, others prefer manual labour. Such being the different natural faculties of individuals, they must be permitted to realise their best selves and not forced to do things or adopt vocations for which they are not mentally or physically equipped. To force them to act against their inclinations will be like squeezing square children into round holes. Equality, therefore, implies the creation of equal opportunities for all. That is, the state must so arrange the social and political order as to enable each citizen to grow to his full stature as a citizen, in the occupation he chooses. There should be no denial of reasonable opportunity. No individual should complain: 'I could not develop my faculties to the full for there were no opportunities before me; I was hindered by the social order from doing so.'

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Again, equal opportunities do not guarantee equal achievements by all citizens. Ultimate inequalities in achievements are bound to occur due to differences in the natural capacities of various individuals. The state can, at best, provide equal

facilities

opportunities to all, but it cannot compel individuals to take equal advantage of them. It can open schools and keep their doors open to all, poor as well as rich, and even make education free and compulsory, but how can it force a dull boy to keep pace with the intelligent? The state should not provide special privileges for some and put unnecessary obstacles in the path of others. It should guarantee equal and adequate opportunities to all. Such conditions constitute equality.

Equality and liberty require that all citizens must acquire a sufficiently high minimum standard of education and have an economic minimum way of living. In a country where education is confined to the few and the rich, as it is in India, the common people remain ignorant and instead of being a help to the progressive section of the society, they prove a great hindrance to the general advancement of the nation. Education enables citizens to realise the significance of their rights and duties. Often times, uneducated persons begin to feel that they are born to be slaves or to work for the comfort of others. Such is the case with the peasantry of India. This attitude of mind retards the progress of society. It can, however, be corrected by raising the standard of compulsory education. It must, at the same time, be understood that compulsory education should not be confined to the three R's. On the other hand, it should widen the mental faculties to the extent that all citizens may know exactly how they can enjoy their rights and discharge their obligations to society. After such a

high minimum of compulsory education has been achieved, the state must also provide for continued and higher education for purposes of specialisation in some branches of arts or science, for those who have an aptitude for higher learning. Such special facilities should follow, and not precede, the compulsory educational minimum.

Another requisite for achieving equality and liberty is the economic minimum. It has now been conceded practically all over the world that it is the primary duty of the state to so arrange the politico-economic system as to enable every able-bodied citizen, provided he is willing to work and is not indolent, to get some kind of employment for earning a decent livelihood. There should be no social parasites in an advanced and progressive state. All must find work and earn enough to provide food, neat and enough clothing, and a clean house for their families. The modern capitalistic system suffers from serious defects. It enables the few capitalists to live comfortably and luxuriously at the expense of the unfortunate labourers. The state ought to intervene to the extent of partly, if not wholly, levelling down the standard of living. ✓ Superfluity to some is permissible only after the bare needs of all have been supplied. This does not mean that the brick-layer and the mathematician should be compulsorily placed on a perfectly equal economic footing, or that they must have the same amount of wealth. It only means that the willing worker must not starve because of the defective economic system in the organisation and working of

which the poorer labouring class has no voice. Fortunately, this fact is now being increasingly realised in all civilised states, so much so that the International Labour Office (I.L.O.) and International Labour Conferences are making efforts to create better conditions of life for the labouring classes. Privileges are now being given up in places where the majority of the people do not have even the bare necessities of life.

Kinds of Rights.—Only when all citizens have acquired right type of education and obtained ample means for a decent living, can they enjoy their rights and fulfil obligations. Rights are of different kinds. There are the moral rights, legal rights, natural rights and political rights. As a right constitutes a condition of life in which the citizen is enabled to enjoy privileges allowed by the state, it necessarily involves due consideration of a similar right for others. Hence rights are obtained, or possible, only in a society. Robinson Crusoe had no right in the lonely island. He was simply master of all he surveyed. There could be no limit to his freedom or activities. Rights exist in a society and an individual enjoys them in relation to others, by recognising the fact that others too have the same rights.

Moral rights are those that are recognised by public opinion. They are not enforceable by law, for their infringement is not a legal crime. Suppose a fund is instituted for maintaining a charitable dispensary in our neighbourhood. It is then our duty to pay something, however small, to that fund, because the sick and the poor have a moral right on

us to be helped. Public opinion demands and our own conscience tells us that if we do not help others, we cannot expect others to help us. Hence the performance of moral duties and the enjoyment of moral rights make social life happier. Such rights cannot be enumerated. They arise out of circumstances and are, therefore, determined by intelligent public opinion.

Legal Rights are those that are regulated by the state through its laws. The state justifies its existence only by recognising the rights of its citizens, in return for which they owe allegiance to it and perform their duties to others. Hence, the more civilised or advanced a state the larger the sphere of rights it recognises. But this does not mean that the mere absence of recognition of certain rights by the state invalidates them. The content of rights undergoes changes with time and place; and sometimes men are even forced to raise a revolt against the state to compel it to guarantee some rights. Once the state has secured rights to the citizens, it is left to the latter to utilise them to realise their best selves, for the state can only create conditions but it cannot force citizens to benefit by them. Legal rights, when once recognised by the state, can be enforced by law which protects them. And in a democratic state ample opportunity is made available to the citizen to safeguard his rights against attacks from outside or inside.

✓ Some rights are called *natural rights*. These are neither the creation of any state nor are demanded by public opinion. They are born with the child, so to say. I must have air to breathe and

light and sun to work in. These are gifts of nature and essential to the growth of man. Every individual, therefore, must have them as his natural rights. Such rights can be enforced by the state for the existence of the state depends upon the growth of individuals who ought to be enabled to grow up under proper conditions.

Fundamental Rights.—All democratic states guarantee a large number of political and civil rights. Most of these are generally included in the constitution of the state, and are, therefore, called *fundamental rights*. Their mention in the constitution gives them a kind of sanctity, constantly reminding the citizen to strive, with others, to attain his best self. In case of invasion of these rights by the state, the citizen can sue it under terms of the constitution, for these rights are prior to the state in the sense that recognised as they are in the constitution, the creation of the state is based upon them. Fundamental rights are valued the most, because they touch the primary freedom of the individual. All states, however, do not have constitutions with a declaration of such rights. England does not possess any special declaration of rights and yet it guarantees all such rights through its system of government, like any other democratic state. But with most of the states having written constitutions it has become almost customary to give an important place to the declaration of fundamental rights of the citizens. Two important things must, however, be borne in mind with regard to these rights. Firstly, they too have (corresponding) duties of

citizens attached to them; and, secondly, they are not absolute. There is always a limit to which they may be exercised.

Some of the fundamental rights are :—

I. The right to personal liberty or security of person. It means that no individual would be deprived of his personal freedom by being imprisoned or otherwise unless he commits a crime and is then judicially condemned. In England this right is secured by Habeas Corpus Act, according to which every person must be produced before a court of law to stand his trial for any crime the state considers him guilty of. In India, unfortunately, this right does not exist. We have still on the statute book several laws which empower the executive to deport a man, imprison him indefinitely or otherwise restrict his movements without trial, or in some cases even without giving him any reasons.

Liberty of one's person is a very precious right indeed. Of what use is a man's property or education or any valuable possession unless he has security of his own person? Without existence of individuals who have a right to live, the state has no meaning; it is an absurdity. But this right to life is not absolute. When the state is in danger of foreign attack or when it is actually at war with another state, it can call upon the citizen to join the army, fight for the country and even lay down his life for the safety of the whole state. This is the corresponding duty which the individual must willingly perform if he claims to enjoy security of life and person. Also, the citizen must not

commit suicide under plea of freedom over his person. Suicide is anti-social and strikes at the root of man's existence. The state cannot permit it.

2. The right to acquire property is another valuable right of a citizen. A man can lead a comfortable life only if he is allowed to do the work he pleases, provided it does not interfere with a similar right of others and is not against the larger interests of the state. And as a result of his work, he must enjoy the fruits thereof, that is, he must be allowed to acquire and use his property. Of all forms of a man's personal property the most important is his house. It must be inviolable so that he may live happily. It is often said that an Englishman's house is his castle. This means that an Englishman has complete control over his house. In India too, this right is secured but with certain limitations, because the executive acquires to itself all powers to deprive a man of his residence.

As a corresponding duty, whenever the state is in danger of foreign attack or is under great difficulties, the citizen has to place his property at its disposal so that it may be used for the maintenance of its security. The citizen has also to pay taxes, a part of his property, to the state.

3. The right to freedom of thought, expression of opinion and forming of associations is one of the most cherished rights of free citizens. The aim of the state being the realisation of their best selves by the citizens, the latter must enjoy the right to free development of their faculties. They must not be hindered from free thinking which contributes to

the all round progress of society and adds to the store of human knowledge. They must also be free to speak out their minds, provided in so doing they do not scandalise others. Even criticism of the actions of government is necessary to restrain it from harmful measures.

In all free countries, freedom of the press prevails and men are allowed to print or publish anything provided it is not blasphemous, scandalous or obscene. Similarly, in those states people are free to form associations and hold and attend meetings. In India, unfortunately, citizens do not enjoy these rights without serious restrictions. The executive has armed itself with several laws that prevent people from the exercise of these rights. There are press laws that curtail the liberty of printers, publishers and authors. Often times people have to obtain permission from the executive to hold or address meetings. The Indian Penal Code contains several sections which prevent citizens from expressing their thoughts and forming associations. Though with the rise of political and civic consciousness Indians are slowly fighting for and obtaining these rights, the constitution, including the one now about to be introduced, does not contain any fundamental rights of citizens.

The corresponding duty of citizens is to act in a way so as not to hinder others from enjoying similar rights and also to help the state to continue its authority.

4. Liberty of the conscience and religious practices is another, though recently developed,

right. All modern states recognise it and observe perfect neutrality in religious matters ; none of them recognises any particular religion as its own. The only restriction in the exercise of this right, which is the citizen's corresponding duty, is that the faith which any people practise must not be indecent, nor should it interfere with the similar right of others.

✓ 5. The right to hold office in the state is a political right. All democratic states allow their citizens, without distinction of any kind whatever, to occupy any state offices for which they are fit by virtue of their attainments, integrity of character and general sound education. All have free scope in this respect, and there is neither any special privilege nor any discrimination. The citizens, on their part, are expected to discharge the duties of their office in the best interests of the state.

✓ 6. The right to vote is another precious political right. All democratic states aim at universal adult franchise and at present it prevails in most states with parliamentary institutions. In India, popular franchise was introduced, though on a very restricted scale, with the Reforms of 1919, and the Government has promised to extend it slowly but steadily so that ultimately universal adult suffrage be established. The citizen, on his part, has to exercise this right without any prejudices and with the sole aim of sending true representatives to the legislatures and other public bodies. If bad laws are made by legislators, the fault is partly of the voters who do not send proper persons to the legislatures. Hence the right of vote imposes a duty to vote with extreme

care, preference being given to those candidates who are by virtue of their education, training and public service best fitted for the responsible task of law-making for the community.

7. Equality before the law is also a political right of great value. A state that does not treat all its citizens as equals in the eye of law loses its claim to popular allegiance. Most modern states, therefore, provide for treating citizens equally. In England, this is secured by the *Rule of Law*. It means that law treats all alike without making any distinction even between a government official and a private citizen. Both are tried by the same court and punished equally for similar offences. This secures three things. Firstly, the law is supreme over all, and none is to be arrested or imprisoned without due reason and without proper trial. Secondly, every person, whatever his rank or authority, "is subject to the same ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals".* This English system is in strange contrast with the system prevailing in some of the European countries, notably France, where special tribunals are appointed for the trial of government officials. Prof. Dicey thus speaks of the supremacy of the Rule of Law: "With us every official, from the Prime Minister down to a constable or collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen".** And this equality before the law is so complete that only the King is

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* Dicey. *Law of the Constitution* p. 189.

** *Ibid.*

considered to do 'no wrong' and to be above the law, and this too is possible to assert because no action of the King is done without a minister's responsibility. Thirdly, the rule implies that the general principles on which the constitution is based are derived from judicial decisions which determine the rights of private persons, and, therefore, the government is above all arbitrariness.

In India, the Rule of Law prevails with certain reservations. Some of the high government officials are exempted from the jurisdiction of the High Courts for those acts which they do in their official capacity. Further, sanction of the government is necessary to institute a criminal suit against officers of certain ranks. If an officer acts against the law but on a written order of the Governor-General, he is immune from being prosecuted.

8. The right to family is one of the civil rights of a citizen. The state being composed of citizens, they must be enabled to marry without hindrance and to lead family life in their own way. And side by side they have obligations to the state, *viz.* to produce children and bring them up in such a way as to make them efficient citizens.

Besides the above mentioned rights, there are others which do not need detailed treatment. Every citizen must be free to follow a vocation, to bear arms for his safety, to enter into civil contracts, to move about and to send and receive correspondence without hindrance or censure. There are corresponding duties too which citizens perform if they enjoy the rights. And a proper adjustment of rights and duties means true citizenship.

CHAPTER IV

NATURE AND FORMS OF THE STATE

As indicated in Chapter II, the state is a human association presiding over all other associations. Its membership is compulsory and natural. Every individual is born in a state. Even in the uncivilised and undeveloped territories like the tribal country lying between India and Afghanistan, and generally known as the 'No Man's Land', every child that is born necessarily finds himself a member of the tribe which claims a certain territory as its own. Some state or the other claims the savages as belonging to it. Hence, membership of a state is natural and a state may, therefore, be considered as a natural as well as an artificial association. Though established by man, it has acquired a continuity and a nature which make it natural for all practical purposes.

State Defined.—We may define a state as a human institution with a definite territory and a number of people organised into a political society with an administrative system of its own. Four things, therefore, seem to be requisite to constitute a state, viz. territory, population, unity and organisation. The land surface of the earth, wherever the hand of man has penetrated to work it, has been divided into definite territories each of which belongs to some state or the other. And each individual claims to belong to some state. People

living in a territory develop several common feelings, linguistic, cultural, etc., which give them a kind of unity peculiar to them. They organise themselves into a body politic and for this purpose they establish institutions based on a particular system; it is this organisation, its nature and method, which distinguishes a state from all other forms of human associations.

Origin of the State.—The state is as old as mankind. At every period of history of man, we find individuals organised into societies with similar, though not identical, purposes as a modern state. There have been, undoubtedly, marked differences in the natures, forms, and functions of states, but all the same certain features have always been common. The differences have chiefly been due to varying conditions of human life, stages of human civilisation and the general environments in which men have lived from times immemorial.

Political thinkers have advanced different theories with regard to the origin of the state. None of these can however, be subjected to verification as those of physical sciences can be. All of them appear to have some truths as well as untruths. Here we may notice some of the most important of them.

Divine Origin Theory.—This theory holds that political authority is derived directly from God, and therefore, the King is responsible to God alone and not to the people living under him. It is the King who makes laws, and compels people to obey them. He himself is not bound by those laws, for he is the

maker of laws for everybody. People must submit to his authority unquestioningly even though he may be a wicked King. Rebellion against the King's authority means rebellion against God, for King is God's representative on earth. James I, the first Stuart King of England and a firm believer in the theory, thus describes this aspect: "As it is atheism and blasphemy to dispute what God can do, so it is presumption and high contempt in a subject to dispute what a king can do or to say that a king cannot do this or that". This is certainly a very extravagant claim for it makes the King's authority absolute, responsible to God alone, hereditary and permanent, depriving the people of the right to seek redress of their grievances, to subvert cruel rule and to establish in its place beneficial rule.

The theory proved useful at one time, when it was advocated, by raising monarchy as a bulwark against anarchy and thus establishing order. It emphasised obedience to laws and discipline. It gave a spiritual or divine character to the authority of the government and therefore people began to look upon the government as their protector. The theory, however, became unpopular on the rise of the social contract theory and now it remains completely exploded.

Social Contract Theory.—The chief exponents of this theory were Hobbes, Locke and Rousseau. It presumes that in the pre-social state men lived in a state of nature. All were absolutely free, none dependent upon or subordinate to the other. They came together of their free will and entered into a

voluntary contract to establish a society. Hobbes depicts the state of nature as one of constant warfare and troubles, and hence intolerable; therefore it compelled men to form a society. Locke and Rousseau, on the other hand, take a better view of that state of nature and assert that men entered into a social contract in order to realise advantages of union. Hence these three thinkers differ in drawing conclusions. Hobbes uses the theory to justify *absolute* rule. For, he says, once people entered into a contract to establish a state, the ruler becomes vested with fullest authority to control the destinies of those under him. He is, then, the supreme law maker who removes the fear of anarchy that was, according to Hobbes, the chief feature of the precontract state.

Locke, on the other hand, says the ruler is also bound to govern well. He thinks that the state of nature was not one of anarchy; it was merely inconvenient and unsatisfactory. Men felt the necessity to safeguard their interests and to do this they replaced the law of nature by a law of their own making. But he maintains that even the sovereign or ruler was a party to the contract which united the people into a body politic, and hence the sovereign was as much subject to the terms and conditions of the contract as other men. Locke's monarch, therefore, holds his office only so long as he complies with the terms of the contract. If he breaks the terms, the contract is dissolved, and the authority of the monarch, which was derived from that contract is also gone. Thus, Locke supports the principle of a limited monarchy.

Rousseau, a French writer who flourished in the eighteenth century, takes an entirely different view of the social contract. He explains his theory in his famous book *Contract Social*. According to him, the state of nature was neither one of perpetual warfare nor unsatisfactory. On the other hand, it was a state of perfect bliss and happiness in which every individual enjoyed *unlimited right* to get what pleased him. This state continued only so far as the number of persons in the primitive state was limited. But as numbers increased new obstacles created powerful forces which seriously interfered with the individual's freedom. Therefore, men were forced to give up their *natural liberty* and came together to enter into a voluntary union which set up an "association which may defend and protect with all the force of the community the person and property of each associate, and by which each, being united to all, yet only obeys himself and remains as free as before". To this contract, according to Rousseau, each was a party. And the King was merely a *commissioned officer* entrusted with the duty to preserve the contract in accordance with the *general will*. By *general will* he means the cumulative opinion of the members constituting the society. Therefore, Rousseau supports popular sovereignty even against the King and thus goes a step further than Locke in defending democracy.

The Social Contract Theory, though it found favour with the people of the seventeenth and eighteenth centuries, has been criticised from several points of view. Firstly, it is considered an historical

fiction that men ever entered into a voluntary contract to give up the state of nature. It is said that history does not afford a single example of primitive people, living in the state of nature and ignorant of what society meant, entering into a covenant of the kind indicated. It is true that there have been instances like that of the *Mayflower* agreement, but these pacts were entered into by persons who had already known what social life was like. Secondly, it seems to be philosophically absurd to assume that the relation between the individual and the state is based upon voluntary agreement. Just as a child is a born member of a family, so is he a member of a state. Moreover, we cannot divide the history of human race into two periods, the one forming the "natural" state and the other being the "artificial" state. Thirdly, the contract must be held legally defective, for whenever a contract is made between individuals there is always a distinct body or force behind to compel the parties to keep the contract. Here, if all persons in the state of nature were equal, what was the force behind the contract to give it a legal force?

Even though there is much force in this criticism, the theory definitely proved useful in the days it was advanced. It gave a certain human explanation of political authority and thus helped to maintain the existence of the political society intact. It also formed the basis of modern democratic ideals by emphasising the fact that the ultimate source of authority is the *people*.

The Force Theory.—This theory asserts that the state is the outcome of force; the stronger subjugating

the weaker and thus compelling the latter to obey the former's authority. No doubt, in the primitive times, physically stronger persons must have used their superior strength to conquer the weaker ones to establish their rule and authority over them. And it is also true that in all ages the weaker have submitted to the rule of the stronger. But we cannot admit that force alone is the basis of the state and that all states continue because of the superior physical power of the ruling body. In most modern states we find that political authority is based upon the consent of the people who owe allegiance to the state. The Force Theory was advanced particularly by the ecclesiastics who wanted to discredit the state by calling it the offspring of brute force, and to establish the authority of the Church by basing it on spiritual origin.

Other Theories.—There are several other theories about the origin of the state. The Patriarchal Theory states that the rule of the eldest male in the house, and then in the family, which prevailed in primitive societies, led to the principle of heredity. The authority of that father was accepted even after the family had widely extended. Thus a state came into existence under the rule of the patriarch whose commands took the form of laws. The Matriarchal Theory believes that originally the rule of the mother was in vogue in the family and it was on the expansion of her authority that the state came into existence. The Evolutionary Theory asserts that the state is the result of slow growth through ages. In this growth several factors, *e.g.*, kinship, religion, political

consciousness, and the need for establishing order, have participated. These showed the necessity for some form of government to make and enforce law and thus the present state came into existence.

Kinds of States.—Whatever might have been the origin of the state we must admit that it is the most important of all human organisations, as it vitally affects every aspect of life of the individual. States have been of different kinds from the point of view of size. In the very ancient days, the Orient developed imperial states covering large areas, rightly called Oriental Empires, resting on the authority of the most powerful patriarch. He absorbed into his own small state, consisting of his extended family, other weaker states, with their consent, to which he granted a considerable degree of internal freedom. Sometimes he conquered adjacent territories and annexed them to his imperial state. In such empires the bond that united the weaker and distant states to the powerful and central state was either blood relationship or superior physical force. These empires—as those of Egypt, Persia and China—were mainly tax-collecting bodies though the authority of the Emperor was theoretically recognised as supreme. There was no common allegiance of the citizens nor any common law. The empires soon proved unstable and when several rival chiefs grew strong and powerful, the imperial sceptre passed from dynasty to dynasty, from city to city, and then ultimately broke up. However, the empires had performed useful service by bringing political communities together and forcing obedience to law and authority.

In ancient Greece, on the other hand, smaller political communities sprang up. They had a distinct organisation and a peculiar outlook of life. Their rise was due to the physical nature of the country which is hilly, containing many fertile valleys, and has a very indented sea-coast with a large number of adjoining islands about it. The country was especially suitable for small agricultural communities to live in and develop their own institutions.

The Greek City-State.—It comprised of a city and the adjoining area like an English-shire. Each city-state was independent, though most of them had similar purposes and a common culture. They guarded their individual freedom jealously, each state being self-sufficing and self-governing. They were either autocratically governed or were democracies ; but Greek democracy was confined to a very small part of the population ; the majority of the population consisted of slaves who toiled for the benefit of the citizen class. Want of cooperation between the states and frequent wars among them led to an extreme kind of exclusiveness of one state from another. Moreover, Sparta and Athens, the two most important among them, fought for leadership of the rest and ultimately foreign invasions led to the break up or absorption of these states.

The Roman Empire.—Rome too started her political career as a city-state formed by the union, on a common religious basis, of several tribes inhabiting the fertile plains of the Tiber. But she soon extended her influence abroad and the king embarked upon the mission of making wide conquests. First

neighbouring, and then distant, territories were annexed and, in course of time, the original city-state developed into an extensive empire comprising several countries of modern Europe. Roman Law developed and exercised profound influence upon other legal systems. The ideal of Roman citizenship became so wide that all members of the Empire were called Roman citizens. Rome thus gave the world a new conception of an empire-state, a distinct legal system and a wide and all-embracing citizenship. Invasions of savage tribes and the unwieldy size of the Empire led to its break-up.

The Modern Nation-State.—For the last three centuries or so, the modern world has developed national states. Their rise was due, in Europe particularly, to the conflict between the Kings and the Popes. The former could not tolerate the latter's interference in matters temporal. The movement for cutting off the authority of the Pope from the secular states gained considerable momentum from the spread of the Reformation. People began to look upon the king as the outward symbol of their national unity. When feudalism declined, the power of the king had no rival to reckon with inside the state. When gunpowder came into use, and national standing armies were set up, national pride became too strong to tolerate foreign interference. Therefore, obedience to national monarchs alone became the general tendency of people. Despotic monarchies sprang up. Absolutism of kings served to weld groups within the state into a united people who then formed the nation, attached to the land of their

birth, with their cultural, linguistic and national unity. Subsequently, with the growth of enlightenment and general education, people were awakened to a sense of their rights and duties; they offered resistance to the despotism of their rulers and demanded a voice in the general administration of the state. This conflict between the rulers and their subjects continued for a long time, everywhere resulting in the recognition of the rights of the subjects. Democracy, thus, made its way into most of the European states and finally into other continents. Ultimately, democratic national states became the ideal of the people. At present all states are national, with their own culture, system of administration and ideal of citizens' rights. They are independent and sovereign, and cooperate only in matters of international importance.

Forms of States.—States differ among themselves from another point of view, *viz.* the form of their organisation. As already said, each state must possess an organisation, a system of administration of its own. This system is not, however, the same from state to state. One important difference lies in the number of persons who direct or determine and control the policy of administration, that is, who compose the government of the country. Aristotle, the Greek philosopher, classified states on this basis. According to him, states are either monarchic, aristocratic or democratic, depending upon whether one person or a few or all or many persons control the administration. Monarchy, Aristocracy and Democracy were his three standards of

government. Each of them, he said, has also a degenerate form. When the rule of one man is directed towards his own benefit without reference to the good of the subjects, it becomes a tyranny. Again, when a few persons, whether of noble birth or possessing riches, govern the country in such a way as to overlook the interests of the general mass of the people, and attach all importance to their own interests, aristocracy degenerates into oligarchy. And, lastly, when the people, as a whole, direct the administration without following prescribed rules to maintain peace and order, democracy (degenerates) into anarchy or mob-rule. This Aristotelian classification does not completely fit in with the modern forms of states; it, however, serves a useful purpose by furnishing contrast between ancient and modern forms of governments.

In modern states, whenever a monarch is at the head of a state, he is not usually the law-maker or sole legislator, though in pre-war Russia the authority of the Czar was too great to allow popular legislation and he was a true despot. Modern monarchy is generally limited by the force of customs, usages and laws; in the making of laws the people, through their representatives, exercise definite control. People in a modern monarchy have well denned rights.

In the modern age, several states have passed through the stage of aristocratic rule. The monarch usually collected round himself a band of advisers in the conduct of administration. They tendered advice not for their own benefit but with a view to

①
Tyranny

②
Oligarchy

③
Anarchy

Diff. b/w
ancient
& modern
states

19th Century
nineteenth
Century.

satisfy the masses and administer to their needs. In England, for example, even till the beginning of the nineteenth century, the Crown and the House of Lords controlled a majority of seats in the House of Commons to which only wealthy persons could get elected on account of narrow franchise and heavy expenditure which elections and life in London entailed. To all practical purposes, therefore, English aristocracy ruled the state. But this aristocracy was different from ancient aristocracy. While the latter was extremely narrow and monopolised all important offices in the state and constituted the only class of citizens, the former was broad-based and had no monopoly of power or rights of citizenship. The English, or modern, aristocracy merely controlled the administration. The ancient aristocracy constituted the state, leaving all others outside the pale of citizen class, whereas modern aristocracy extended its citizenship to all persons living within its territory.

Similarly, there are evident differences in the forms of ancient and modern democracies. Though democracy means the system of government wherein all classes of citizens have a voice, direct or indirect, ancient democracy was confined only to a narrow citizen class; the majority of the people living within the territory of the state, as in Athens, had been classed as non-citizens or slaves without any civil or political rights. In modern democratic states, all persons have equal rights, political or civil, and there is no such distinction as citizens and non-citizens amongst the children of the soil, leaving out,

of course, the aliens or foreigners who reside within a foreign state temporarily. Secondly, ancient democracy was generally direct, that is, all persons entitled to be called citizens took direct part in the making of laws and general control over the administration, whereas modern democracy is of the representative type in which citizens elect their representatives, a few persons only, who make and conduct the policy of administration. This difference is mainly due to the fact that ancient states were merely city-states and the number of actual citizens was so small (only a few thousands) and their problems were so few and simple that all the citizens could participate in the administration. On the other hand, modern states extend over immense areas and their population counts in several millions, in some cases a few hundred millions, and their problems are now so comprehensive and complex that direct participation by the citizens, in the government, is physically impossible and administratively impracticable. They are, therefore, called upon to elect a few representatives to put the general will into operation. It is true that direct democracy is more likely to work according to the wishes of the citizens and has greater chances of proving beneficial than representative democracy, but the institution of local bodies with powers to look after and conduct the administration of smaller areas into which the modern state is generally divided, partly offsets the disadvantages of representative or indirect democracy.

More of democracy and local administration will be said in later chapters.

Hobbes to maintain order
+ property.

~~Hobbes~~ Locke

CHAPTER V

FUNCTIONS OF THE STATE

Admitting that the state is the most important and natural human association, the membership of which is compulsory and pre-determined, a question arises: What is the purpose or end of the state? That is, what functions does the state perform and what function ought it to perform? From time to time various theories have been advanced with regard to the end of the state. The Greeks believed that the purpose of the state was to provide all that was necessary to make human life fully developed and happy. Aristotle thought that the state should develop virtues in its citizens. The followers of the Church, during the Middle Ages, believed that the chief function of the state was to defend Christianity against the attacks of the non-believers. This was definitely a view which could be evaluated only in religious terms.

Theories of State Functions.—With the rise of liberalism in the modern times, serious attention was given to a discussion of the purposes and functions of the state. To Hobbes, who depicted a very gloomy picture of the pre-social state, the end of the state was to maintain (order) and (property) rights. Locke believed that the state must make a common law and through it maintain not only life and property but also liberty. Rousseau went still further

and believing that the state is the highest perfection of the best in man asserted that its purpose was to make the life of the individual good and happy and thus assigned it a wider field of activity.

The greatest good

The utilitarians, in the nineteenth century, strongly supported the view that the chief purpose of the state was to secure 'the greatest good of the greatest number'. The individualists said that the state existed for maintaining law or at most peace and order, and that it must leave the individual to work out his own good. That is, the state must simply hinder the hindrances in the path of the individual's good, leaving him then free to achieve his good. They believed that the individual is a better judge of his own interests than the state and should, therefore, be left to himself. They would not admit the usefulness of the state as an omnipotent association. To them "the ideal Government is no government at all; the existence of government in any shape is a sign of man's imperfection". In their view the state exists because of the existence of crime in society and not because it performs any positive useful function. Therefore, it must be content with merely police functions so as to punish or prevent crime. The individualists, towards the end of the eighteenth century, demanded freedom of trade and industry, as shown in Adam Smith's famous book *Wealth of Nations*. He denounced all state laws which in any manner restricted the free interchange of products or employment of labour. This doctrine of *Laissez Faire* sums up the individualistic theory of the state. Ricardo, Malthus and Spencer were

some of the leading individualists who supported this theory in their several writings. They did not believe that the state is competent enough to judge the good of the individuals or to accomplish that good. Much of the present ills of society they attributed to the state which, in their view, has really failed to justify its numerous activities and interferences. The individualistic theory is defective because it over-emphasises the failings of the state and ignores the positive good it accomplishes. With the increasing complexities of modern life there is need for recognising the inter-dependence of men. We cannot apply individual energy, unaided by any agency like the state, to lead a happy life. "In reality wisely organized and directed state action not only enlarges the moral, physical, and intellectual capacities of individuals, but increases their liberty of action by removing obstacles placed in their way by the strong and the self-seeking, and thus frees them from the necessity of a perpetual struggle with those who would take advantage of their weakness." The individualistic theory does not, therefore, represent the correct view of man's capacity and state's usefulness.

On the other hand, the socialists, the chief opponents of the individualists, believe that the state is a supreme and positive good and, therefore, it must direct the promotion of all interests, economic, intellectual and moral, of the people. They too admit the necessity of allowing the individual freedom of action but they contend that this can be better done by organised efforts rather than

through the *laissez faire* policy which permits unrestricted competition and is, for that reason, likely to lead to unfairness and undue restriction for the weaker elements in society. The extreme socialists would like the state even to guarantee work for all individuals, provide them loans free of interest, give them implements, build houses for them and make available almost all means of pleasure. Their chief argument is that under the present economic order of society, the labourer unduly suffers whereas the capitalist enjoys undeserved comforts. There must be justice and all classes of society must get proportionate share in the profits of industry. According to the socialists, this can be done only if the state owns monopoly of all the important industries and runs the whole economic machinery. Such a system, though it might possibly lead to an equalisation of economic profits, is bound to lead to stagnation as no individual would care to make progress in science and discover new methods from the increased profits of which he has no chance of getting extra advantages. Therefore, socialism will ultimately lead to retardation of progress. In fact, the idea of extreme socialism has never been achieved in practice; such is the criticism of the socialistic view of the purpose of the state.

In the face of these conflicting views and theories of the purpose and functions of the state, it is difficult to suggest one single answer to the question raised at the beginning of this discussion. It is, however, true that the state can justify its existence only by performing functions which tend to promote

Socialists
They
must get
Proportionate
Share in
profits of
industry

the good of the citizens. The state, therefore, is not an end itself, but a means to secure an end, though a most essential and important means. And with regard to the functions which it ought to perform, the truth lies somewhere between the two extreme views of the individualists and the socialists. Neither the state should leave the individual entirely to himself, confining its functions to mere maintenance of order; nor should it interfere too much with the liberty of the individual, for after all it is he who can judge what faculties inherent in him he can fully develop. In the former case, there is too much dependence upon weak efforts, and in the latter, there is too great a restraint upon potential energy of the individual.

Increased Interdependence of Men.—With the development of science in the modern age, our conception of human life is undergoing rapid changes. We feel the force of interdependence of not only the individuals but also of the groups and associations including the states. The activities of a state now exercise profound influence upon those of other states. However much we may like to put in geographical barriers and political and national boundaries to mark out the regions beyond which we have nothing to learn or do, the economic interdependence of nations has become too powerful to permit us a life of national segregation. Quick means of transport, the railway, the aeroplanes, and the steamships, the wireless and the telephone, all have combined together to rule out such a life. Internationalism is now a live force to be seriously taken

into view in determining the functions which a state ought to perform.

Kinds of State Functions.—Modern states are, therefore, performing functions of a varied nature, and they all have their own notions regarding the extent and scope of their activities. Still we may distinguish some of these functions. All writers on political science agree that there are some functions which every state ought to perform; they are essential for its very existence. Such functions are generally termed essential or obligatory or constituent functions. They are common to all states, whatever their type, form or constitution be. Then there are those functions which all progressive states, that believe in promoting the happiness of their citizens, perform. These functions are neither fixed nor exhaustive, but vary from state to state, according to the development and prosperity of each. Such functions are necessary to make life happier and are, therefore, termed *non-essential* or *ministrant* functions. We may discuss here these two kinds of functions.

Essential or Constituent Functions.—These are functions which every state ought to, and does, perform irrespective of its form. They are essential because no state can justify its existence without performing them. They constitute the *immediate end* of the state as distinguished from the *ultimate* or *remote end*. The state being an organisation of human beings, it must first of all maintain peace between the individuals. This is the most essential, in fact, the first function of the state. Without peace and order there will result a condition of anarchy,

①
Essential
obligatory
functions

②
non-essential
functions

①
peace
and order

very much resembling the state of nature as depicted by Hobbes, in which there is constant warfare. The individuals ought to feel that they must respect the lives of others if they themselves wish to live. To maintain order, every state must keep an army so that it may ward off foreign attacks and also quell serious internal disturbances should these ever arise. Foreign defence and internal peace form the bed-rock of an organised state. The army defends the state against foreigners, but every state has also to maintain active and friendly relations with neighbouring states and, therefore, international relations and dealings particularly in the modern age, constitute an essential duty of the state. Then to protect the life and property of the individual in every day dealings, the state must keep a police force. It will stop violence and robbery and secure for the citizens a condition of peaceful life. This being done, the citizens will have ample opportunity to devote their energies to realise their best selves by developing their constructive faculties.

The next duty of a state is to administer justice whenever there is a dispute between two or more individuals. This function is, in fact, a corollary of the first one. It involves the definition and punishment of crimes and the maintenance of laws and a system of courts to enforce the laws.

The state must also fix the legal relations between husband and wife, and between parents and children. This is necessary to maintain continuity of the race and to preserve family life which is the primary basis of the state organisation.

for heavy & order State must keep an army -

8
must keep
with
Police

Police will stop violence & robbery

2
to admin
justice

3
Legal relat
between husband & wife

Regulation
for Protection
of property

Every state must provide for holding and trans-
mission of property and its interchange. Regulation
of debts and the discharge of liabilities are essential
for the protection of property. To do this, the state
has to define contract rights between its citizens and
to enforce these rights through civil courts.

Declaration
of Rights
Other by
Judicial
decisions

All individuals resident within the state must
know what political and civil rights they possess as
citizens of the state. These rights the state has to
define. In many states the constitutions contain a
definite declaration of these rights, and in others
strong conventions, traditions and judicial decisions
define them. Such rights form the basis of citizen-
ship and civic life.

These are, in brief, the *essential* or *obligatory*
functions which each state has performed and does
perform in one shape or the other. It is true that at
different periods of history, different conceptions of
the nature and scope of the functions of state have
been held, due, chiefly, to the varying historical
conditions and circumstances. Both in theory and
in practice, the ancient states differed from the
modern states. In ancient times society and the
government were essentially one. The individual
was merged in the state. In the feudal age, this
union was broken; society went back to its position
of family groups and the state became a distinct
institution which permitted the individuals to own
land and thus become sovereign. Allegiance to
state was determined by ownership of land and,
therefore, the functions of the state were confined
chiefly to proprietorship of land, issuing commands

and receiving obedience. Out of the ruins of this feudalism arose the Monarchy which, disregarding the rights of the individual, asserted that the Monarch himself formed the state and the citizens had to obey him and serve him. This extreme form of despotism had a reaction which was slow and peaceful in England, but violent on the continent. Men asserted that they had fundamental rights which the state must recognise and guarantee if it seeks their allegiance. Democracy took the place of isolated monarchy or its predecessor in the feudal state.

Thus, by slow degrees, the old concept of individual for the state has been reversed and made to read 'the state for the individual'. This profound change has, while increasing the functions of the state so as to include besides the above mentioned constituent functions many *ministrant* or *non-essential* functions, also enlarged the field of the individual's activities by recognising his rights and liberties. Still, the change has not materially altered the field of activity which the state, in its obligatory functions, had to traverse. Whether we look to ancient states or to medieval or modern states, we do perceive that they have performed their *essential* functions to preserve themselves in every age.

Ministrant or Non-essential Functions.—Besides the above mentioned functions which all states have to perform, there are many more functions which, though they are not essential for the very existence of the state, are of considerable importance because they directly promote the general well-being of the

Spelling

citizens morally, intellectually and economically. These functions are optional, because they are not so binding on the states as the essential functions and also because even individuals, too, if left to themselves, may perform them, though not so efficiently as the state. As Prof. Gettel remarks, these functions "include activities which, if left to individuals, would be either inefficiently or unjustly performed or not performed at all". To be successfully performed, these functions need a large sum of money, a very great amount of cooperation between individuals and considerable vigilance, for upon their performance depends the goodness or badness of the government. The state alone possesses the necessary resources to take up these functions. In fact, the modern tendency is to judge the advancement and prosperity of a state by the extent to which it directs its activities towards the promotion of the common weal, which is directly proportionate to the scope and nature of its functions. The wider the scope of state's activities, the better the chances for its becoming prosperous, and the vice versa.

To be remembered

Category

Optional or ministrant functions vary from state to state. The evolution of the modern state shows how some of the functions which ancient states considered as essential, for example, direction of intellectual and religious beliefs of its citizens, have now passed into the category of non-essential functions. On the other hand, it has taken upon itself some other functions like charity, amusements and education, which at one time were performed by private or religious societies. Most modern states

the state is not essential for the state to be a state

different between old and modern functions

now perform, in varying degrees, the following optional functions.

Education is the most important of all the optional functions of a modern civilised state. In fact, a state that neglects the education of its children, or pays only meagre attention to it, soon loses the sympathies of its citizens and forfeits its claim to be called civilised or advanced. Right to education is included in the fundamental rights of citizens embodied in the constitutions of several states. Every civilised state, therefore, makes ample provision for the imparting of education, primary, secondary and higher, for education "decreases crime and poverty, it equips men for the various trades and professions by which the resources and interests of the state may be utilised or conserved, and it makes citizens capable of taking an intelligent part in public affairs".

2 Sanitation and Health is yet another function which, though optional, is performed by all modern civilised states. It includes establishment of hospitals, combating of epidemics, regulation and sale of foodstuffs, and imposing of restrictions upon the sale of intoxicating and alcoholic products. Care is taken to see that children imbibe the habits of cleanliness and to this end most states make provision for medical inspection of school children. In India, particularly, the problem of village sanitation is of great importance. In the face of the serious poverty of the masses, it is the supreme duty of the state to take all possible measures to improve the sanitary conditions of our villages so that in times of epidemics, which usually visit the villages and take away a heavy toll

of lives, villagers may protect themselves. Therefore, in any scheme of rural uplift village sanitation must find the first place.

All states attempt to provide ample means of transport for facilitating travel, increasing internal and external trade and bringing about closer union between the distant parts of the country. Railways, roads, bridges, canals, and ferries are all undertaken to perform this function. In our vast country, it has been discovered that agricultural produce in villages far away from cities or railway line does not fetch the value it should. Hence, it is very necessary to spread a net-work of roads to enable the poor villager to carry his produce to the market and realise proper price from it.

Commerce and industry too have now occupied an important place in the forward programme of all modern states which have, in this age of science, an economic basis of existence. Their advancement is now judged by the general material prosperity of its citizens. Efforts are made to apply all state resources for helping individuals and companies, by providing ample means, to increase commerce and industry. Coinage, currency, banking, weights and measures, post offices, telegraph, telephone, electric power, water works, gas power, markets, docks and piers, protective tariffs and state subsidies are some of the many means whereby all advanced states undertake to develop commerce and industry. They also regulate the relations between the capitalists and labourers by enacting suitable laws, particularly those that

State's task

guarantee a living wage, ample leisure and old age and disability pension and insurance against accidents to the poor labouring class.

It is also the duty of every civilised state to take care of the poor and the incapable, by making laws to help them to secure employment, etc. It starts schemes to provide them work or to give them *doles* to maintain themselves. Several necessary institutions are established, like asylums, work-houses, schools for blind and deaf or dumb, to help the incapable and the needy.

The above is but an illustrative list of the optional functions which states perform in varying degrees. A closer study of the two kinds of functions, essential and optional, reveals the fact that in most modern states it is extremely difficult to draw a line of demarcation between them. The activities of the modern state are becoming so comprehensive as to include all sorts of functions which tend to make the life of the citizens happy and prosperous. In so doing, its efforts are largely supplemented by private efforts of the citizens.

CHAPTER VI

LAW AND SOVEREIGNTY

Meaning of Law.—The word *Law* is capable of a variety of meanings. Some use it to express the relation between cause and effect in the physical world. For example, when a heavy body thrown into the air falls back to the ground, we say it does so according to the Law of Gravitation. When water is poured on the ground it flows towards lower level, and we ascribe it to the law that governs the flow of liquids. In these cases we use the term *Law* to denote the cause and effect of phenomena observed by the eye. In the domain of political science, however, *law* means the rules of conduct governing a human society, the state. These rules are, necessarily, prescribed by human agency. *Law*, in this sense, may be defined as that set of rules of conduct which govern the relations existing between the individuals themselves in an organised state and also those between the individuals and the state. As such relations are capable of being classified into several kinds, so is law capable of a similar classification.

When a particular rule of conduct governs social relations between individuals, it is called a *social* or *civil law*. When a certain rule prescribes the nature of political conduct of an individual—his relation to the state—it is called a *political law*. Laws may be

positive, that is, they may require the individuals to act in a particular and well defined way; or, they may be negative, in which case they prohibit the doing of certain acts. A breach of law, whether that law is positive or negative, is generally, but not always, followed by punishment inflicted by the state. When the law is in the nature of a command, for example, the law of income tax requiring the payment of income tax on the income of citizens at prescribed rates, its infringement, that is, non-payment of income tax, is followed by punishment. But in certain cases, a law may merely recognise the scope of human activity or may make it permissible to do certain acts, non-observance of such a law does not mean that punishment is to be inflicted upon the person concerned. For example, a state may recognise the validity of any marriage contracted between a man and a woman belonging to different communities, religions or races. This only means that if such a marriage takes place, the state will recognise it as legal or valid marriage. And it does not, however, mean that every person must marry another person belonging to a different community or professing a different religion. If people continue to marry within their own community, it will not amount to a breach of the civil marriage law as this law is merely permissive and not binding on the citizens. A permissive law is not a command but only an assertion or recognition of some rights which people may or may not like to enjoy.

Different Kinds of Laws.—To make the subject, content and scope of political or positive law

clear, we need mention other kinds of laws which though prevailing in society do not have the backing of the might of the state. Some of such laws are called *Moral Laws*. These govern the conduct of individuals as members of society, not the political society or state, and the force behind them is not the force of the state with a threat of punishment in case these laws are not obeyed. They are binding on an individual *morally*, and not *legally*. Human nature declares them as necessary to the proper discharge by a person of his duties towards his neighbours, kinsfolk, tribesmen, etc. For example, if people start a charitable dispensary for free treatment of the sick and the poor, it is the *moral duty* of every well-to-do person in the locality to contribute his mite to the maintenance of that institution. Failure to do so does not amount to an illegal act, for the state does not make it obligatory on every citizen to pay such subscriptions. But public opinion demands that those who can help *must* help the institution. In this case, the *must* is not *legal*; it is only *moral*. If we ignore it, we forfeit our claim to enjoy the confidence of our neighbours and cannot expect from them any voluntary help in our distress. Moral laws, though not recognised by the state, yet play a very important part in the relations of individuals. Such laws cannot be expressed in any statute book. They are not fixed or determinate for all time. They change with the changing environments of society and are, therefore, determined by public opinion for the time being.

Some laws are called *Natural Laws*, because they govern the occurrence of phenomena in nature. They are not fixed by human ingenuity. For example, the law of gravitation states that the earth attracts to itself all bodies in the air, that is, it exercises the force of attraction. This law of physical science was discovered, *not made*, by experimenters in science. They observed similar phenomena happening in nature and, therefore, arrived at a conclusion which was expressed in the law of gravitation. The law was there even before men discovered it; bodies always fell to the ground even though men did not understand how and why they fell.

Natural laws differ widely from positive laws. Positive laws are definitely laid down by competent persons to govern and guide human conduct, and once they are so laid down individuals generally act in accordance with them. They know they would be punished if they break the laws. And so long as these laws remain in force people *have to mould* their conduct accordingly. Such is not the case with natural laws. Natural phenomena happen not because of the existence of natural laws, but because in nature events do happen in that way, Natural laws are, therefore, determined by observing natural phenomena. If, however, we find any phenomena happening against a natural law as determined before, our conclusion is that *the law is wrong* and *not that the phenomena are illegal*. The difference between positive law and natural law may thus be described :—

1. Natural laws express the generality of the occurrence of phenomena in nature, whereas positive laws require that men should act according to them.

✓ 2. If natural phenomena happen contrary to what the natural law tells us we at once conclude that the law was not correctly determined and it must be changed in conformity to the natural events. On the other hand, if a person acts contrary to a positive law he must be punished, and we do not have to change the law so as to follow his action.

✓ 3. Natural laws are not man-made, but only man-discovered. Positive laws are definitely man-made.

✓ 4. Positive laws are not the same in all communities but natural laws are the same for all places and communities.

✓ 5. Positive laws are capable of amendment in order to suit the convenience of men, whereas there is no such possibility in case of natural laws.

✓ Some laws are called *international laws*. These include those bodies of rules of conduct which nations have accepted as governing their mutual relations. They are generally conventions or agreements made between and accepted by different nations. They are different from national laws which apply only to the citizens of a nation. There is always a punishment attached to each breach of a command or law issued by a state to its citizens, whereas in the case of international laws, the nations generally agree to act in accordance with them. These laws cannot be enforced upon any

nation that begins to flout them, for there is no imponent force behind them. Nations are morally bound to observe international laws, but there is no legal obligation on them.

Sources of Positive Laws (of a state).—Positive laws are defined by some writers as commands issued by an 'authorised public organ acting within the sphere of its legal competence'. But all laws are not necessarily in the nature of commands; many of them are general assertions which prescribe the rules of conduct between individuals. Furthermore, commands may be taken to mean the will of the issuing authority irrespective of any limits except those that are imposed upon it by its own free choice. But the authorised organ has to act within limits imposed on it by custom, tradition and the general tone of the community; that is, there is a restriction placed on its scope of freedom.

Correctly speaking, a law is the rule of conduct, written or unwritten, determined by the habits, customs and usages of a people, and recognised as law by the state. This at once brings us to the question: What are the various sources from which positive laws are generally derived? Sources of the positive laws of a state may be divided into the following classes:—

I. *Custom.*

This has always played an important part in the making of laws, *i.e.* in determining the rules which govern the conduct of members in an organised society. Custom represents the habits

of a people. It regulates their life imperceptibly and yet forcefully. It is essentially of slow growth and undergoes evolutionary changes with the changing environments and times, but it is never subject to violent changes. Such being the nature of custom, no society will submit to rules of conduct or laws which are contrary to customs. In fact, men prescribe only those rules of conduct which have become a part of their nature. Primitive societies, in particular, were governed by custom alone, which adjusted their mutual relations, and in course of time, passed into the region of *law*. As Woodrow Wilson remarks, custom "becomes law only when it wins the support of definite authority within the community".

2. *Religion.*

It has exercised very great influence upon the lives of people, particularly in primitive and medieval societies. All founders of religions laid down definite standards and ways of living and their prescriptions became embodied in writings which, later on, were looked upon as the only sanctions to govern the lives and activities of men. In ancient days religion was the very breath of life; it was the fundamental basis of society as well as of state and men became so much accustomed to rules of religion that they would accept them, without question or doubt, as laws. In modern societies, too, religion exercises considerable influence, even though it may not appear visible to us.

3. *Scientific Discussion*

Almost every race has produced, at some period of its history or other, an influential

philosopher or guide who has devoted his energies to the discussion of rules of conduct and in so doing he has left to the people a code of morality to guide them in their life. Such a code has become precious and authoritative to the race and, therefore, occupied a high place in its literature. He has been looked upon as its law-maker. For example, among Hindus, Manu has been one of the earliest and most important law-givers, whose treatise (Smriti of Manu) even now continues to be their authoritative guide. Among Muslims, the *Shariat* is yet the authority on private, and some times personal laws.

4. *Judicial Decisions.*

Often times, in the course of deciding disputes, judges have not only to expound and apply the existing laws but also to remove any defects in them by suggesting their own interpretations of the implied sense of laws. In so doing, they perform an important work of law-giving as their rulings and interpretations are often quoted as authoritative. Particularly, the rulings of the High Courts supply such additional laws which form a valuable guide in tackling future cases. Such a judge-made law is termed *Equity*.

5. *Legislation.*

The most prolific source of law in the modern age is legislation or deliberate *formulation* or *declaration* of laws by the law-making body in the state, be that body a single magistrate or king or a regular legislature. In all ages of history we find law-makers giving the community its laws. Only a few centuries back, the king, father or prætor or the archon,

used to be the chief law-giver and there was no question of challenging his authority. In smaller communities, however, sometimes all male adults used to sit together to deliberate upon important matters and frame their own laws. Even today we have such examples. In almost all the smaller cantons of Switzerland, the citizens come together to make laws. In India, we may discern the germs of direct law-making in the caste *panchayats* which concern themselves generally with social questions arising within the caste or sub-caste.

It was left to the Germans to introduce the system of representation. But when this system came, it spread among all nations and communities, so much so that with us legislation through representative bodies has become the most familiar method of law-making. As Woodrow Wilson remarks: "For us Legislation is the work of representative bodies almost exclusively; but representation is no part of the essential character of the legislative act." Even an absolute king or a ruling aristocracy has acted as an active law-giver. With the advancement of science, the growing needs of people, the tremendous increase in the area and population of a modern state, and the large volume of international relations, representative bodies are doing most of the work of law-making. But it must be remembered that in this deliberate act of law-making, the law-maker is always guided by the habits of the people, their existing customs and usages, the religious injunctions, the views of philosophers and thinkers and the pronouncements

of judges. That is, no law-giver makes a law which has no chance of receiving ready acceptance by the majority of the people for whom the law is made. Even when private companies or corporations embark upon the task of framing their laws and bye-laws, they take into consideration the habits—customs—of the people. Though religion is now only a matter that concerns the conscience, equity is merged in legislative enactments and deliberate legislation is superseding all the sources of law, custom still reigns supreme. “It is custom, the silent and unconcerted but none the less prevalent movement, that is, of the common thought and action of a community which recognizes changes of circumstance which judges would not, without its sanction, feel..... Custom, too, never ceases to build up practices legal in their character and yet wholly outside formal Law, constructing even, in its action on Congresses and Parliaments, great parts of constitutions...Custom is Habit another name; and Habit in its growth, while it continually adjusts itself to the standard fixed in formal Law, also slowly compels formal Law to conform to its abiding influences”. Such is the power of custom in the formulation of laws. No law can find acceptance with or be obeyed by the majority of the community, unless it mirrors their general *will* and is adaptable to the circumstances prevailing at the time. Law is, therefore, not the creation of individuals but of “the special needs, the special opportunities, the special perils or misfortunes of communities”. Every true law must answer the needs of the majority as well as the minority, else

it would become null and void. Every legislator has, while making a law, got to take into consideration the traditions, habits and customs of his people, which form the very basis of the character and needs of a nation.

Sovereignty.—While speaking of law, a question arises as to who makes the law and what sanction is there behind the law. In all states there is always some body of person or persons who are primarily responsible for making the law. That body exercises the law-making power on behalf of the state. The laws made by one state are binding on its citizens, but have no force in other states. Each state is fully empowered to exercise its authority of law-making and in each state there is but one *determinate* body which issues these laws; there is no rival body within the state. To enforce its laws the state can ultimately, and should necessity arise, use all the physical force at its disposal. Here is the sanction behind the laws of a state. For this reason, every independent state is said to be sovereign, *i.e.* all powerful for the exercise of its authority, without being subject to any superior or equally powerful body. This attribute of a state, *viz.* its power to issue laws for its citizens, without interference from any other rival body, and to enforce these laws with all its resources, is termed the *sovereignty* of the state. In the exercise of this attribute, it issues commands or laws and receives obedience or allegiance from the citizens. And as that sovereign within the state is the supreme law-maker, there cannot possibly be put any limit to its power of law-making. That is, the

state is the legal sovereign. It is in the exercise of this supreme power that the state is distinguished from all other associations none of which possesses sovereignty.

When a state comes into existence it receives allegiance of a number of people living in a definite territory. The state possesses an organisation and a unity of feeling which binds all citizens together to give them a distinctive character as contrasted from all other peoples. In return, the state guarantees to its citizens the enjoyment of certain rights. And it is this fact of commands and obedience, or rights and allegiance, that proves the existence of the state.

The great English jurist, John Austin, has thus defined sovereignty and law:—"If a determinate human superior not in the habit of obedience to a like superior receive habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society and that society (including the superior) is a society political and independent." On closely examining this definition, we find that the superior must be *determinate*, there must be *no other rival* to it, and it *must receive habitual obedience* from the bulk of the society. To apply this definition to all modern states we must discover all the three facts in them. Every modern state has a machinery for making laws which have to be obeyed by its citizens. Is this law-making body determinate? And is it superior to all other bodies? In England, for example, the law-making body is the British Parliament. This Parliament is composed of the House of Lords and House

of Commons. The former has very little power, particularly after the passing of Parliament Act of 1911, and it is only the House of Commons which exercises most of the law-making powers. The House of Commons consists of 615 members elected in 595 constituencies, by means of adult universal franchise. It is true there is no limit to the law-making power of the House of Commons (or more correctly speaking British Parliament). This legal supremacy of Parliament has been characteristically described by a writer who says that it can do anything except changing the sex of a person. In practice, it only means that the legality of any measure passed by Parliament cannot be questioned in a law court. But can Parliament really do anything and everything? Has it no determinate superior to which it has to render account of its activities? We know that the usual term of any new House of Commons is only five years and after that period at least (or it may even be earlier) there is a general election. At the time of such general election, the candidates go to electors to seek the latter's support for election. That is, at that time it is in the hands of the general body of electors to send any candidates to the House. Hence, the electors are the real source of authority enjoyed by the House, and they must be sovereign and not the House. Some writers meet this objection by suggesting that the electors delegate their sovereignty to the House, but sovereignty is an inalienable attribute of the body that possesses it, and so it cannot be transferred or delegated. Others, again, suggest that the House is the legal sovereign and the electors

are the political sovereign. But sovereignty cannot thus be divided into two parts each to be exercised by a different body, for then there will exist two sovereigns which fact will cut at the very root of the theory of sovereignty which states that the sovereign is a superior without a rival.

As for the question of habitual obedience, it is true that the citizens do obey the laws but when they find that the laws are bad they protest against them and get them so changed as to be free from all objectionable elements. That is, the citizens compel the law-making body to exercise its powers in the interest of the citizens and not irrespective of any restrictions.

Sovereignty of the State.—Supporters of the theory of sovereignty assert that the state is a sovereign body in its internal and external actions. Internally, it is sovereign, *i.e.* has supreme power of law-making and administration, for there is no restriction to its powers. In actual practice, as Laski points out, the state has to yield to customs, opinion of the people, and influences of religious and social bodies in making any law, and no government, the chief organ of the state, can ignore any of these important factors. Every government, as we all know, generally publishes a legislative measure which it wishes to enact into law, in order to elicit public opinion and act according to it. When criticisms of the measure appear, say in the press, the legislature has to bear them in mind before enacting the law. For, after all, no law can be enforced against the clear wishes of the people for

whom it is meant. However, it is true that when once the law is made, it becomes binding upon the citizens.

Externally, it is said, the state is sovereign, *i.e.* independent of the control of any other state. Even when a state enters into treaties or international engagements with other states, these treaties and engagements do not actually limit the authority of the state, for they cannot be enforced by any compelling authority. The state may observe them or refute them. "It naturally follows that the sovereignty of a state cannot be divided. The exercise of its powers may be distributed among various governmental organs, but sovereignty or supreme will is a unit, just as each state is a unit, and as the organisation or government of each state is a unit. If sovereignty is not absolute, no state exists; if sovereignty is divided, more than one state exists. There can be no legal power back of the sovereignty of the state and no legal check on its scope." In these words Prof. Gettel describes the external sovereignty of the state.

But the critics of sovereignty say that in these days of scientific discoveries and economic interdependence of nations, we are being forcibly drifted towards a world community (the Great Society) and no state exercises complete independence even in its external affairs. It has to respect the wishes of other states on whom it has to depend for several things including commerce. The complete and permanent isolation of a state in the modern age is impossible. Our civilisation is essentially based upon co-operation

and this means subordination of our wishes, to some extent at any rate, to the like wishes of others. Such is the position of every independent state in the sphere of inter-statal activity. In such matters as labour laws, tariffs, maintenance of navy, general armaments and immigration, states are interdependent.

In a federal state the concept of sovereignty undergoes a radical change. There the constitution prescribes definite limits to the powers which the governments of the states or the central national government are allowed to exercise. There is no single body which enjoys unlimited powers. And we cannot possibly say that in a federation the sovereignty is divided between the different governments for that will give sovereignty a character which an attribute cannot possess.

Location of Sovereignty.—If there is such a thing as sovereignty at all, where does it reside? In the legislature, or in the executive or in the electors? Some writers hold that sovereignty resides in the legislature, while others say that it resides in the body which has the power of changing the constitution of the state. But none of these opinions seems to be correct. For, if sovereignty is an attribute, a quality, it must be abstract and hence similar for all states. But states do not have same kinds of legislatures, in composition, powers, etc. Nor do all states have a similar body to change the constitution. Hence, these views regarding the location of sovereignty do not fit in with the classification of states into monarchies, aristocracies and democracies, or

with parliamentary and presidential types of governments. Therefore, it seems but reasonable that if a state possesses the attribute of sovereignty or supreme power, this power must lie in the people of the state, for after all the state rests upon the consent of the people. If people remain passive for a moment and allow the ruler to have his way, it only means that for some time sovereignty remains asleep or unexercised. But the people are the real repository of sovereign power. Even then, the Austinian definition needs improvement, for the people too are not determinate, because there are minors who acquire majority at different intervals making the totality of the citizens dependent upon time.

CHAPTER VII

CONSTITUTIONS

One of the most important distinctions between the ancient and modern states is that the former existed without having a definitely prescribed system whereby their administration was conducted, on the other hand, all modern states possess clearly defined and set up systems. That is, ancient states did not, as a general rule, possess a definite "constitution," whereas modern states do possess one. This fact is expressed in other words, namely, all modern states have *Constitutional Government*. By Constitutional Government is meant a form of government which, as opposed to what may be called personal government, is based not on the temporary will or whim of a ruler or persons exercising political power in the state, but is, on the contrary, based upon the rules and principles so clearly defined and so generally accepted as to control the actions of public officers. Again, as Dicey points out, constitutional government is a government of laws and not a government of men. This emphasises the fact that in a constitutional government, laws rather than men control the administration which to a greater or less degree is popular in character in that it admits to some extent of the participation of the important elements in the state's life. These rules, laws and principles according to which the government of a state is carried on, form the constitution of that state.

Constitution Defined.—The term “constitution” was first employed to designate certain fundamental customs or ancient usages declared in some form by the English King with the assent of his Great Council. Thus Henry II in 1164 issued a set of rules governing the relations between the Secular and Ecclesiastical Courts, and these became known as the *Constitutions of Clarendon*. Ostensibly they were not new rules, but merely the old usages put into written form and formally declared. So it was with the provisions which the barons wrung from King John in 1215. On a much broader scale, Magna Carta enumerated the various fundamental customs of the realm. It was a document which merely defined, and not declared by legislation, the rights of barons, and it might have as well been called the constitution of Runnymede. This surrender of the king marked the beginning of constitutional government in Europe, that is of a government based upon a definite understanding between the parties concerned. Since then the movement of constitutionalism has spread in other continents and now all advanced states are constitutionally governed.

Different writers have defined the term “Constitution” in their own words, which differ more in phraseology than in sense. Thus, Bryce states that “the constitution of a state or nation consists of those of its rules or laws which determine the form of its government and the respective rights and duties of its citizens, and of the citizens towards the government.” According to Prof. Gettel, the form of a state is its constitution and it consists of “that mass of customs, those fundamental and often

revolutionary-formed principles, and such laws, created by special or regular organs as, combined, determine the organisation of the state."

As discussed in an earlier chapter, the state has, as one of its attributes, a certain organisation, that is a certain system of government, which is the outcome, often times, of a series of changes which the state undergoes during the course of its history. Sometimes these changes are revolutionary, but generally they come about slowly and even imperceptibly. The traditions, customs, usages and habits of the people of a state determine, for the most part, the nature, character and form whereby they are governed either by themselves or by some other agency. Unless the rules or laws of government of a people conform to their habits, traditions, customs and environments, they cannot conduce to the well-being of that community. Hence, the constitution of a state may be defined as that body of rules or laws which being based upon the past history, traditions, customs, usages and general environments of the people, determine the process and machinery of their organisation, by defining the relations of the citizens between themselves, of the citizens to the state and of the various organs of the government.

The machinery of government of a people is necessarily of a complex character and consists of various parts. The constitution prescribes the limits and nature of powers which each of these parts is to play.

How Constitutions are made.—The way in which the constitution of a state is made or brought into existence is not fixed. It differs from state to state. This difference is due to the previous history of the

country which is really the background of the constitution. We may study here some of the important methods by which a constitution is made.

A country may get a constitution as a free gift from its ruler. In Japan, for example, the constitution is a gift from the Emperor. This process is general for those countries where absolute monarchy prevails before the establishment of constitutional government. In such countries either the ruler may be forced, due to discontent among his people or their actual rebellion, to recognise the rights of his subjects, put them into writing, that is, in a precise form, and also define the way in which the future government of the country is to be carried on, or he may, of his free will, give to his people the benefits of constitutional government.

Sometimes a dependent country may shake off foreign yoke, or win its independence, as actually happened in the United States of America in 1775. When the thirteen colonies became independent as a result of the War of Independence, they appointed a convention and later on a congress to decide the constitution for a political union between them. The representatives of the several states then met and framed a constitution for the United States of America. But in doing so they kept before their minds the wishes of the people and also the previous history of the colonies under Britain. In this attempt to frame a constitution they borrowed some of the ideals from other countries. When constitutions are thus made, they are generally of a more democratic character than when a ruler gives a constitution in the form of a free gift.

A dependent country may get a constitution from its rulers. In such a case, the people of the dependent country are not, as a rule, allowed to have an effective voice in the framing of that constitution. Naturally, therefore, such a constitution safeguards the interests of the ruling country along with giving the dependent country a system of government. In India, for example, the constitution is made by the British Parliament which is, as a matter of fact, responsible for governing India. True, in the making of the constitution contained in the Government of India Act, 1935, the British Government associated some of the Indian politicians and rulers of Indian States with the committees and conferences that did some spade work before the actual constitution was made, but the suggestions made by Indians were mere recommendations most of which did not find acceptance by the Government. Hence, the constitution of India is made by the British Parliament alone. It is based on the theory that the Parliament is the trustee for the well-being of Indians.

Sometimes, a country, though ruled by a foreign country, has been able to get a constitution from the latter, based upon recommendations made by the former. For example, in 1767, Canada got a constitution passed for her by the British Parliament, and based upon the Quebec resolutions which had been agreed upon between the delegates of the various provinces in Canada. In 1900, Australia became a federal Commonwealth with a constitution which was really framed by the delegates of the governments of the several states in Australia but was enacted into law by the British Parliament. So that, though

the constitution of the Commonwealth is legally speaking, made by the British Parliament, it is, in fact, made by Australian politicians and accepted by the people of Australia in a general referendum.

A country ruled by its own king has obtained a democratic constitution from the successive rulers by a progressive recognition of the rights of the people. The constitution of England is of this nature. It is a product of the various recognitions by British Sovereigns of the rights of their subjects from time to time.

Classification of Constitutions.—Before discussing the various classes of constitutions, we must understand what a constitution really does.

Every constitution, in some form or the other, sets forth the limits within which the government exercises its powers. In whatever way a constitution may be made, it does definitely limit the exercise of governmental power. It says what things the government can do and what things it cannot do, and to that extent the constitution becomes the source of political power.

A constitution determines the rights and obligations of subjects and groups of subjects with reference to their government and also with reference to one another. It determines who may participate in the exercise of governmental power, and to what extent and in what manner. Even in the most democratic states all persons are not permitted to participate in the government; and in less democratic states quite a large body of persons is definitely excluded from such participation.

A constitution defines certain fundamental principles and rules and prescribes the methods whereby government officials are to be appointed or chosen.

It determines, in a general way, and often times in details, in what manner the government shall be organised, what powers shall be exercised by the several organs of the government and how these organs will co-ordinate their activities. Thus the constitution becomes the supreme law of the land, on which all other laws depend for their validity. Anything done against the spirit and essence of the constitution is illegal and unauthorised.

In short, a constitution establishes a constitutional government, which may or may not be democratic, and rules out the possibility of absolute and capricious government. The governments in Germany and Italy follow their own constitutions, but as people have no voice in the system, these constitutional governments are undemocratic. It must be clearly understood that a government may have a defined system of government, *i. e.* a constitution, and for that reason it may be a constitutional government and it may be irresponsible to the wishes of the people. For example, the government of India is a constitutional government, because it follows a constitution. Yet, it is not a democratic government, as Indians have neither made the constitution nor do they exercise an effective voice in the administration.

Constitutions may be, therefore, classified in many ways. One of the ways in which constitutions are classified is that of the *written* or *unwritten*

character. Some constitutions are generally unwritten. They are contained in customs, usages, conventions and stray acts of the legislature. The most notable example of an unwritten constitution is the constitution of England. When we say that the English constitution is unwritten, we mean to imply that there is no one act of Parliament which contains the main principles of the system of English Government. From time to time Parliament has passed several acts which define some of the important parts of the administrative machinery. It is in these stray acts, many conventions (all of them unwritten) and constitutional practices that we may discover how England is governed. The English have, through the several centuries of their political career, made progress towards constitutional government. And in this slow march on the road to constitutionalism they have been guided by the circumstances of the time, now introducing one reform and then another. They have never departed completely from the position existing at any particular time. This accounts for the fact that in many matters conventions are as strong in their constitution as any single parliamentary act. On the other hand, all other modern states possess written constitutions which are contained in a single document or piece of legislation. Every one of these constitutions was prepared at one time and reduced into writing. It clearly marked a departure from the then existing conditions and hence the necessity to put the chief features into writing. True, in every state unwritten practices have considerably affected the governmental machinery and in some countries there are as strong

conventions of the constitution (which is written) as those in England. From this point of view, no constitution is entirely written or entirely unwritten. Nor can it be said as to which constitution, written or unwritten, is the better of the two. No doubt, in a written constitution the rights of the subjects are, as a general rule, definitely stated and, therefore, people know where they stand. But it is really the spirit in which the constitution is worked that is of importance with regard to securing the good of the citizens. In the case of France, the constitution is written, but it is contained in several constitutional laws and organic laws. That is, it is not contained in any one act of legislature. Still, as all these constitutional laws and organic laws can be brought together in one place to give us a picture of the system of government, we put the French constitution into the category of the written ones.

Another classification of the constitutions is that into *democratic* and *undemocratic*. A constitution that allows the citizens a voice, either directly or through their representatives, in every branch of the government, is called a democratic constitution. Almost all the so-called advanced and civilised states, barring a few which have now dictatorships, have democratic constitutions. On the contrary, a constitution which does not permit the citizens to influence the administration, particularly in the making and execution of laws, is called an undemocratic constitution. Italy, Germany, and Spain besides all the absolute monarchies of smaller and unadvanced countries, have undemocratic constitutions, for it is not ultimately the voice of the people

that prevails in the day-to-day administration of these countries, but the view of one dictator or monarch or the view of a few powerful persons.

Constitutions are, again, classified into *unitary* or *federal*. A unitary constitution is one which entrusts all the powers of government, including the making of laws, their execution and the judicial power, to one government only, without sharing the responsibility with any other similar body. England, France, Italy and Japan are some of the important states that have unitary constitutions, *i.e.* in each of them there is but one government which enjoys fullest power to administer the country. A federal constitution is one which divides the powers of government between many governments one of which presides over the whole country and the rest have got smaller and definitely separate territories into which the country is divided. For example, in the United States of America, which has a federal constitution, there are 48 States composing the whole Republic. Each of these States has got a government of its own, with a legislature, executive, judiciary and a revenue system. The government of a State has full power in all matters which have been assigned to it. Then there is one single government, also, for the whole of the Republic, including the 48 States; this common government is called the national or central federal government. It has full powers in certain spheres of governmental activity, which are assigned to it by the constitution. That is to say, the federal constitution divides the powers of government between the national government on the one hand, and the 48 States-Governments on the

other. The national government, too, has its own legislature, executive, judiciary and a revenue system. All matters that are of national importance, like defence, foreign affairs including trade with foreign countries, posts and telegraphs, currency and coinage, railways, and weights and measures, are some of the important matters in which all states are equally interested and which can better be looked after by one government; hence, these functions are entrusted to the national government in the U.S.A. The states enjoy all those powers which have not been clearly given to the national government, and are generally of state importance, that is, do not require one single way of treatment in all states. For example, such functions as education, industries, public health, law and order, local institutions, are entrusted to the governments of the states. Here it may be asked that even in a unitary state there are local bodies, like district and municipal boards in India, which too perform some of the functions of local importance, wherein then does the difference lie between the governments of the part-states in a federation and the local bodies of local self-government in any unitary state? The answer is that in a unitary state the one government of the country delegates to local bodies the power to look after certain matters of local importance, for the sake of administrative convenience only. The government may add to the powers of these bodies, or reduce their powers, and even abolish these bodies, if it so desires, for they are merely its creatures and exist so long as the government permits them to. But in a federation, it is the

constitution itself that creates two sets of governments, central federal government and governments of part-states, and defines their spheres of work. Each of these governments is independent of the other and exercises powers in its own right. The central or national government cannot encroach upon the governments of the part-states.

Here it is profitable to discuss as to the conditions wherein unitary and federal states are established. When the country is small, consists of one homogeneous class of people, speaking one language, having one culture and belonging to one race, it prefers a unitary constitution, because one single government for the whole country can very well look after the interests of the people—interests which are similar for all citizens alike. But when a country is very large, contains in its population persons of different races, one race being predominant in one territory and another in the other, has different economic interests in the various parts, one portion or province being more advanced than the other, has several languages, each language having some territory in which it is widely spoken, it prefers a federal constitution. It may then be divided into many states or provinces each with a generally homogeneous people and with particular local interests, and while the whole country may be kept as one under a national government looking after the interests; common to all provinces, each province may be given one government fully competent within its sphere of authority to govern the province. This ensures that the particular interests of the parts will be as well looked after by the provincial

governments as the common interests of the whole by the national government. In India, in particular, the interests of the people are different in the different parts of the country. They speak different languages, have varying economic interests and are also at different stages of general advancement, hence a federal form of government is the best, especially in view of the existence of a large number of Indian States. The advantages of such a system of government for India will be that the States would be brought into closer union with British Indian Provinces to produce a common nation, and the major communities too will have different provinces with a autonomous administrations in which they will have legitimate share. For example, in the Punjab, Bengal, Sind and North-West Frontier Province, the Muslims being the majority community, they will have an effective share in the government, and in the remaining provinces the Hindus will occupy a similar position. From the administrative point of view also, the provinces will be at liberty to develop their resources and ensure the well-being of their peoples.

There is yet another way in which constitutions may be classified, *viz.* into *flexible* and *rigid*, according to the method by which they may be amended or changed. Why does the necessity to change or amend a constitution arise? With whatever amount of care and degree of far-sightedness the framers of a constitution may draw it up to satisfy all the needs of the people, new problems and conditions arise in the future, which need a new way of handling, not provided for by the constitution. For

this purpose the constitution needs minor changes from time to time, and if it is not so changed the administration fails to satisfy the growing needs of the changed circumstances. Different constitutions contain, within themselves, different methods of amending them. Some constitutions may be changed by the legislature by the ordinary process of law-making and are, therefore, called *flexible* or easy to change. For example, the British constitution can be changed by the British Parliament with the same ease and in the same manner as it passes any ordinary law, because the supremacy of that legislature is unquestioned. Hence the British constitution is called the most flexible of the constitutions. Other constitutions provide for a method of amendment which is more difficult to go through than the ordinary process of law-making. As these constitutions are difficult to amend, they are called *rigid* constitutions. As a general rule, all unwritten constitutions are flexible and all written constitutions are, more or less, rigid. It is because of the fact that unwritten constitutions follow the changing conditions of the country as a matter of course, whereas written constitutions need a clear departure, from the existing practice, to undergo a change. Again, all unitary constitutions are generally flexible, and all federal constitutions are mostly rigid. This is due to the fact that a unitary constitution gives complete powers to one single government and hence there is not much difficulty in introducing changes in the administration. On the other hand, a federal constitution represents a compromise between the national

government and the governments of the several states, and any change made in the constitution affects different interests, therefore, it is not left open to easy changes. Every federal constitution does provide a method to change it, but this method is a bit difficult to go through. It must, however, be remembered that no constitution is entirely flexible or entirely rigid. What has been said above sums up the general nature of the constitutions, and it should not be taken to mean that no unitary constitution is rigid. For example, in France an amendment can be made only by a joint session of the Senate and the House of Representatives, after each has decided by a majority that an amendment is necessary. This method is different from the ordinary process of law-making in France, therefore, the unitary constitution of France is also rigid to some extent.

Often times a question arises: Which constitution is the best? No definite answer can be given to this question. There is much truth in what Pope had said :—

For forms of government let fools contest.

That which is best administered is best.

The object of a constitution being to provide a state with a system of government in which the well-being of the citizens is carefully safeguarded or secured, what really matters is not the form of the constitution but the way in which it is worked. Every country has its own traditions, problems and needs. It requires a government that can satisfy them, hence each country has to adopt a system of its own. In some cases, federal constitutions

are better, and in others unitary ones. Similarly, in some cases written constitutions satisfy the needs of the people and in others unwritten constitutions. It may, however, be mentioned here that the classifications of constitution, discussed above, are not exclusive. For example, a constitution may be democratic or undemocratic and at the same time it may be unitary or federal, and also flexible or rigid, etc. France has a republican, unitary, rigid and written constitution. England has an unwritten, flexible, unitary and democratic constitution of the monarchic type. U.S.A. has a republican, federal, written and very rigid constitution. And so on.

The test of a good constitution is that it must be brief and not unnecessarily detailed so as to be unintelligible; it must be in accordance with the past history of the country; it must aim at the well-being of all the citizens; it must allow all persons in the state to influence the system of administration; and it must be open to such changes as may be found essential in the light of practically working it. Judged from this point of view, every state has to develop its constitution according to its special needs.

CHAPTER VIII

DEMOCRACY AND PUBLIC OPINION

As already said in the previous chapter, one of the classifications of constitutions, as also of states, is based upon the numerical content of the body that governs the state and the object with which it governs. Plato as well as Aristotle agreed that the best kind of government is that in which one person, most virtuous and free from all kinds of selfishness, rules with the only object of making all citizens happy. There is much truth in what they then said, provided that such a person could be found. But human nature being what it is, it is extremely difficult, well-nigh impossible, to get a person who would do this most important work without thinking of his own interests. Hence, in the actual task of governing a state so as to protect the interests of all citizens alike, the best machinery is the one which is controlled and manned by the citizens themselves, for they will then be in the best position to know their good and work to secure and maintain that good. Such has also been the experience of nations in the past. The world has seen empires being formed and extended by the all impelling genius of a conqueror, and these have subsequently decayed with the passing away of the founder and the master. The world has also witnessed the formation of states ruled by influential families and groups of persons. In these

too quarrels arose among the rulers who neglected the interests of the citizens and tried to govern them in their own interests. These aristocratic states also proved failures. It was left to the modern age to experiment, on the widest scale, in the art of a state, large in area as well as population, by the citizens themselves. For this reason, the modern age has been called *the age of democracy*. This concept of political science has recently found disfavour in some of the European states and distinguished thinkers, like H. G. Wells, have begun to assert that democracy is now under revision, meaning that it has outgrown its possible utility and is, in its turn, yielding place to a new order of society.

Democracy Defined.—Though each writer has defined democracy in his own words and in his own way, there underlies a common thought in all definitions of the term. The Greek philosophers defined it as a government in which the poorer classes govern, to the exclusion of the richer. So long as the poor ruled in the interest of all the citizens, the state was a polity, but if the rulers overlooked the good of the rich classes and began to rule in their own interest, it became a mobocracy or anarchy. Such was the Greek conception. Utilitarians like Mill and Bentham regard democracy as a system which secures the 'greatest good of the greatest number,' which amounts to a rule by the majority, of course, not to the detriment of the minority. Viscount Bryce defines democracy as "a government in which the will of the majority of qualified citizens rules, taking the qualified citizens to constitute the great bulk of the inhabitants, say,

roughly, at least three-fourths, so that the physical force of the citizens coincides (broadly speaking) with their voting power." He further says; "Where the will of the whole people prevails in all important matters, even if it has some retarding influences to overcome, or is legally required to act for some purposes in some specially provided manner, that may be called a Democracy." All these definitions admit the superiority of the general body of citizens to one single person or a body of a select few, however enlightened, virtuous and wise the latter may be.

Thus, the foundation of democracy is the good of all citizens, and in short, democracy has been defined as "the government of the people, by the people and for the people." This means that the machinery of a democratic government must be determined by the people; it should be controlled and manned by them; it must be run to serve their interest. This view was expressed by the people of the thirteen colonies in America, in 1776, in their famous Declaration of Independence, when they refused to remain under British rule, in these words:—"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness, that to secure these rights, Governments are instituted, deriving their just powers from the consent of the governed."

Similarly, when the French Revolutionists set forth to enunciate the doctrines on which the constitution of their democratic state was to be based,

they emphasised the equality of all men, their right to participate in the making of all laws and the general administration of the country without in any way restricting such right by reason of a man's religious views or racial extraction. This concept of democracy involved the civil and political equality of all citizens, and it is common to the old democracy of Greece as well as to the modern democracy. Aristotle, while recognising the equality of all citizens within the state, defined a citizen as one "who participates in the functions of juror and legislator, either or both." Modern supporters of democracy, too, make no distinction between one citizen and another on grounds of differences in religion, colour or race.

The Basis of Democracy.—The above definition of democracy has now been accepted so widely as to determine the relations of the members of any society or group of individuals, as between themselves and between the members and the society. Democracy, therefore, has been understood to mean not only a form of government or a type of state but also an order of society. Democracy, as applied to state, means "merely a mode of appointing, controlling, and dismissing a government." We, the moderners, want not only a state which recognises the equality of its citizens, but also a society in which such equality is the basis of organisation, and in which "the spirit of equality and fraternity prevails". In this broad view of democracy we include even the industrial system of the modern world.

What then is the basis of this extensive concept of democracy? It is based, in the main, on the law of nature, a law founded on the natural equality of all men. Bryce thus sums up the doctrines involved in this equality: "Each man who comes into the world comes into it Free, with a mind to think for himself, a will to act for himself. The subjection of one man to another by his own free will is against Nature. All men are born Equal, with an equal right to the pursuit of happiness. That each man may secure this right and preserve his liberty as a member of a community, he must have an equal share in its government, that government being created and maintained by the consent of the community. Equality is the guarantee of independence".

Such a basis of democracy supposes that no man, even if he is possessed of pre-eminent virtues, can be trusted with unrestricted power, for he is likely to abuse that power in his own interest. Secondly, it implies the competence of every individual to decide as to what is his best interest and what kind of organisation is the most likely to secure that interest. Thirdly, it emphasises the fact that the larger the number of persons who apply their cumulative efforts to serve the good of the citizens, the greater the chances of a successful achievement of the aim. Fourthly, it asserts that though every individual may be led astray from the path of general happiness a combined effort of all citizens will minimise the chances of their becoming selfish. Equality of the citizens and their combined efforts to direct the administration of the state

will result in "Justice and Happiness, Justice, because no man or class or group will be strong enough to wrong others; Happiness, because each man, judging best what is for his own good, will have every chance of pursuing it. The principles of liberty and equality are justified by the results they yield." And the best results are produced only when every talent in the state is directed towards the pursuance of the common happiness. A democratic state is, therefore, that in which there is a proper evaluation of the capabilities of the individuals, and in which the direction of common affairs is under the control of all.

Kinds of Democracy Old and New.—As already said, democratic feelings have been present in the world since times immemorial, though at different periods of history they have exercised influence in varying degrees. When Aristotle raised a true polity or democracy to a high place, he was thinking of this concept in the narrow Greek sense of the term. To the Greek mind, equality meant the equality of Greeks proper. They did not allow a vast majority of the inhabitants of their states to enjoy either civil or political equality, for they considered the Greeks proper only as persons capable of intellectual advancement, and the non-Greeks were, in their eyes, fit only to be slaves whose proper function in the state was to employ their physical power for the benefit of the ruling class, *i. e.* the Greeks proper. Therefore, even in the most democratic of the city-states in Greece, citizenship was confined to a small part of the population, the majority being slaves.

Secondly, the Greek ideal of democracy was that of actual participation by each individual citizen, directly, in the appointing of officials, controlling the administration and serving on the judiciary as judges or jurors. Their state was a mere city with a few thousand citizens only (Plato fixing the number of citizens at about five thousand), and it was possible for this small number of persons living within a city or, at the most, in the suburbs, to come together in one place and take direct part in the governance of the state. As most of the work of earning livelihood was done by the slaves, the citizens were free to devote their energies to the administration. Moreover, as they believed in perfect independence of each state and inter-statal communication was limited, their problems of government were few and in solving them each individual citizen could take part. The Greeks believed that laws were unchangeable, so they had no legislation to look after. Their problem of government was confined to appointing of officials, scrutinising their work and imparting of justice. Every Greek citizen had to be a juror or a judge, when his turn came. Such was the Greek conception of democracy. It was evidently different from the modern notion.

Modern democracy, unlike the Greek, is essentially more exhaustive, greater in its scope and all-inclusive. Every modern state is a nation-state comprising of several cities and a large number of villages, with a population to be counted in millions. A modern democratic state does not exclude any section of the population from participation in the

government. That is, the modern conception of citizenship is so extensive as to include every class of people, rich or poor, professing any faith and following any occupation. Modern democracy does not recognise the institution of slavery nor the pre-eminence of any race. It opens equal opportunities to all and sundry, to the labourer, to the peasant, to the baron, all alike. Such is the theoretical view, at least, of modern democracy, though what happens in practice does not exclude the chances of putting the poorer much behind the richer people. At the same time, it must be admitted that even in modern days there are states where a large class of the population is excluded from the enjoyment of rights of citizenship, *e. g.* the Negroes in America and the non-Europeans, or, to be more precise, the Asiatics in South Africa. Even then the number of actual citizens in every one of the modern democratic states is so large and they are spread over such an extensive area that they cannot all come together to take direct part in the administration of the state. Direct democracy in these states is, therefore, impracticable and impossible. Recourse is, for that reason, had to *representation*. It is a system which enables a large number of citizens to elect a few from amongst themselves, as their representatives to take part in the actual administration in such a way that they may reflect the views of their electors, their constituents. Representative democracy has now become the general feature of all the progressive states in these days. England was the first to adopt the representative principle in its government, and

the British House of Commons is the oldest representative body in the present world. From England the movement has spread in all important countries of the world. It is true that under the system of representative institutions the primary voters, the mass of citizens, are removed far away from the actual governing machinery of the state, yet when direct democracy becomes a physical impossibility representative democracy is the second best alternative to capricious rule.

Partly to remove the defects of representative democracy in modern states, some features of direct democracy have been introduced. These are the institutions of referendum, initiative and recall. *Referendum* is the method by which a certain law passed by a representative legislature is referred to the direct vote of the citizens upon whose decision rests the future of that law. *Initiative* is the method which enables a prescribed number of voters to suggest the enactment of a law which these voters may propose either in a complete form or only in general terms. *Recall* is the device which authorises the calling back of a representative, or law or public servant, by a majority of the voters. These three methods which prevail, either all or some of them, in several democratic states at the present time allow the citizens to have a direct voice in the administration, to a certain extent. Though at first sight these methods of direct democracy appear to be beneficial, they have demerits too. Referendum supposes that an ordinary voter is competent to examine and adjudge the usefulness of a law that is referred to

him for his direct vote. But every average voter is not so qualified. Moreover, actual experience of the working of referendum has shown that not a very high percentage of the voters actually go to the polls. Most of those who are opposed to the measure often stay at home. Initiative does not work without drawbacks. Only a few enthusiastic supporters of a particular measure secure the signatures of the prescribed minimum number of voters and the latter, while affixing their signatures, do not actually examine the implications of the law proposed to be enacted. As for recall, sometimes personal jealousies result in the calling back of even competent representatives or officials, because a few discontented but influential persons stir up public feeling against the man they dislike and thus cause his recall. Besides these defects, there are others which seriously cut down the quality of administration. Representatives sometimes vote for a measure in the legislature on account of the personal pressure of party leaders or friends, even though they know that the measure is not in the general interest of the society, for they are confident that voters would demand referendum and ultimately the law would be vetoed. Initiative makes legislators less responsible and active, for they know that even if they do not care to introduce necessary measures in the legislature not much harm would be done, as the voters, if they are keen, would themselves see that it is introduced in the form of initiated measure. Recall makes representatives or officials work in such a way as to win the

applause or admiration of the masses irrespective of the fact whether their action is conducive to the general well-being of the citizens or not. Thus, these three forms of direct democracy tend to make representative democracy work less efficiently rather than remove its defects.

Merits and Demerits of Democracy.—At a time when Europe was groaning under the evils of absolute despotism which trampled under its might the rights of the people, it was believed that democracy would bring in a reign of justice, liberty and equality—a reign of perfect bliss. Since then it has been tried in many countries and found wanting. Though in theory it has many advantages, in practice it has not fulfilled the hopes of its early apostles. Money has perverted administration by its power to purchase votes and influence public opinion in one direction. Politics has, therefore, been misdirected so as to benefit a few at the cost of the many. Political parties have exercised undue influence and by abusing the doctrine of equality and liberty they have merely served to benefit only the less skilled and less capable persons. Representatives have not filled their offices with due amount of responsibility and public-spiritedness. Parliamentary institutions are now being discarded in Europe in favour of dictatorship which is supplanting democracy, for it is hoped that a dictator's rule will prove a *panacea* for all the ills of a post-war period.

Still the supporters of democracy make out a good case in defence of this concept. They say that even if the average voter or legislator be not

able to judge whether a particular measure is good or bad, it is the people themselves who will suffer for their mistakes, and this experience will be a sure guide to them to avoid future mistakes. Democracy does not favour any particular class, it treats all alike, and offers an opportunity to the really capable person to rise to any eminence. It gives us a guarantee that the will of every one in the community shall be duly considered and that no one shall be neglected in what is done by the government. In the words of President Lowell, "In a complete democracy no one can complain that he has not a chance to be heard". What good government requires is a close cooperation or willing alliance between the specialist administrator and the layman, and democracy best fulfils this condition.

Democracy, further, is a large scale experiment in public education. It stimulates interest and is informative. It tends to create a higher type of mentality among the people whom it governs. It ennoble the people. It rests on the principle that what a man earns for himself by his own effort is of much greater value to him than what is handed down to him by some one else. It is the best aid to initiative, self-help, and the cultivation of individual responsibility. The supreme spirit of democracy, says J. S. Mill, lies in the fact that "it promotes a better and higher form of national character than any other polity whatever".

Democracy promotes patriotism. Being a government by persuasion, it minimises the chances of revolution and political discontent. It makes order

and progress easily possible. It is the best expression of the general will of the people. But to be successful it needs a well-formed public opinion which is its real prop.

Public Opinion.—It is rightly said that the best government is the one that is not afraid of public criticism, for it believes that its activities are generally guided by the principle of promoting the well-being of the citizens and not by the idea of serving the interests of any particular class. When the ruler is a monarch, it is imperative that he must know what people really think of the administration, so that he may correct the mistakes before they create discontent and ultimately bring about his fall. When the ruling body is a foreign country, the need for free criticism of the actions of government cannot be over-emphasised. For, with whatever amount of care one country may rule another, the former can never understand the real interests and feelings of the latter. Past history of the world does not encourage us to believe that foreign rule is ever likely to promote the real good of the subject country. It is the well regulated and free public opinion which can serve as the watch-dog of administration, criticising when criticism is necessary and supporting when support is the legitimate due of the rulers. In the case of a democratic state, well-formed and free public opinion is the only means to keep the government within proper bounds. It has been rightly remarked that an ill-informed democracy is the most dangerous form of government. It commits blunders without knowing them, and thus leads to the ultimate

ruin of the community. On the contrary, when the average citizen is in a position to criticise the acts of the government without fear, but with intelligence, there is every chance of mistakes being rectified in time.

In the modern age, the formation of public opinion depends upon several factors, *e.g.* the press, the platform, educational institutions and religious associations. Each one of them exercises considerable influence on the minds of people.

The Press.—Every government in the modern world, barring, of course, those governments which are either dictatorial or foreign, has to depend upon the daily press for knowing exactly how its activities are effecting the citizens. It has, therefore, to recognise the freedom of the press. As Bryce observes, "It is the newspaper press that has made democracy possible in large countries." It collects facts and enables the average readers to form an intelligent opinion on current problems of government, which may then be brought to bear upon the actual administration of the country. No government in a modern state can know the exact feelings of its people on any particular matter except through the free expression of public opinion as reflected in the daily press. Therefore, every democratic or sympathetic government has granted freedom to the press which serves as a vehicle of thought. It is only those governments which are themselves conscious of their shortcomings, that restrict the liberty of the press, knowing as they do that through the medium of the paper the defects of administration would be brought to light and the government would lose public

support. Every popularly supported government has gone so far as to include freedom of the press in the declaration of rights in its constitution, if it has one such. In India, however, the government being still irresponsible, there are severe restrictions on the press. Newspaper- and presses are asked to deposit security which is forfeited in case the news and books published do not meet with the approval of the government. Indians are incessantly fighting for freedom of press, but so far their efforts have met with little success.

The press is a great teacher which can serve the millions in a country at a very cheap rate, by publishing correct news in time. It is a very powerful organ which has often times made and unmade ministries in democratically governed countries. But to be really useful as a guide it must publish all correct news without suppressing any, and present them in an impartial manner, if it wishes people to form their own opinion and not be led away by what others may think through the news-sheet. Unfortunately, however, the modern press is departing from its high ideal by becoming a commercial undertaking for profiteering purposes. It, therefore, publishes only those news that are likely to increase the circulation of the paper and increase the income of the proprietor. Some newspapers suppress facts or present them in a biased manner so as to prejudice the views of an average citizen. This results in the sacrifice of truth.

The Platform.—Sometimes it is necessary that citizens be addressed through speeches. Every

democratic state permits freedom of speech and many of them have included it in the declaration of people's rights in the constitution. On the other hand, irresponsible governments, like that of India, have restricted freedom of speech, and permit holding and addressing of meetings with the previous consent of the executive authorities. Unless citizens are permitted to assemble and speak freely on the activities of the government, neither they can contribute to the reforming of the administration nor can the government know where exactly it stands in the hearts of the people. No doubt, certain restrictions are necessary, but these should relate to such subjects as prohibiting the publication or dissemination of scandalous or obscene things. When freedom of speech is restricted, discontent increases secretly and this leads to revolutions. Every good government must, therefore, grant to its citizens the right to form a correct opinion through speeches as well as writings.

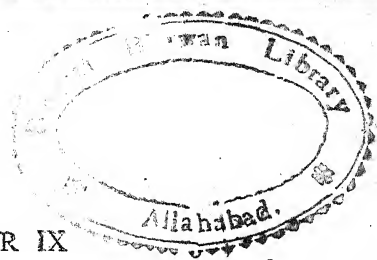
Educational Institutions.—It is often said, and rightly too, that the children of today are the citizens of tomorrow. It is necessary that the children of the state must be provided with such kind of education as is likely to create in them a feeling of patriotism and a breadth of view so that when they grow up into manhood, they may apply their abilities to serve their country and humanity. In this respect the place of educational institutions in the formation of public opinion is very high indeed. In schools and colleges, students read books, hold meetings, conduct debates and discuss

with teachers all sorts of subjects. All these contribute very largely to the formation of an intelligent public opinion. The impressions that are created on the child's mind last longest, and the value of educational institutions as the makers of well disciplined and intelligent citizens with definitely formed public opinion can hardly be over-estimated.

Religious Associations.—In ancient days, religion was the very breath of life. Every activity of the individual was made to conform to the teachings of the religion the state permitted. During the Middle Ages, the Christian Church contributed immensely to the establishment of influential political institutions with a sort of divinity attached to them. The conflict between the Church and the State brought success to the former, in its earlier stages. Ultimately there was a distinct separation between the two and though the State emerged triumphantly, it bore on its lineament a deep impression of the teachings of the Church. In the modern days we speak of a state without a religion of its own. We are supposed to live in an age which recognises religious toleration as the basic principle of state administration. True, religion does not now stand in our way to enlarge the circle of our political sympathies. Still it is supreme in our practical life. The British Sovereign is still the Defender of the Faith. Every ceremony, in the state, is generally performed with an opening religious prayer. In India, particularly, religion still forms the pivot of life and our actions are, to a considerable extent, guided by what religion permits and what it

prohibits. Our people still continue to think in terms of religious communities. Even in Christian countries, the schism between the various sects or schools is still there influencing actions of individuals in public life. The recent anti-Jewish campaign in Germany, though supposed to be based upon racial feelings, is a reminder that religious associations and institutions continue to exercise powerful influence on public opinion. The Red Cross Society with its thousands of branches throughout the world serves people because Christianity demands such service by its adherents. The Gurdwara, the Mosque and the Temple in India are still the seats of teaching which effectively acts in the formation of public opinion. Every government, whether in India or elsewhere, has to feel the pulse of religious associations with regard to new measures. Social legislation, private law, and the like, are never interfered with unless the people affected clearly express themselves favourably through their religious associations.

It must, however, be admitted that in our country, unfortunately, too much religious zeal is standing in the path of the nation's march towards political progress. Religious differences are becoming so acute that combined efforts to solve even the political problem result in failure. It is the duty of all intelligent and patriotic Indians to direct the activities of religious associations in such a way as to form correct opinions on non-religious questions. The religious teachers must confine their attention to the spiritual advancement of their followers without interfering unduly with strictly secular matters.



CHAPTER IX

STRUCTURE OF GOVERNMENT

Governments differ in their structure or form. By structure we mean the form of the machinery which administers the country. This machinery may consist of one, few or many as the case may be, that is to say, the actual power or authority may remain with one, few or many individuals of the State. Further, these bodies constituting the whole machinery may include popular representatives of all people or a few plutocrats or of a few classes of interests. All these differences, apparently minor, lead to serious problems of politics.

It must be noted in this connection that the term 'government' is not synonymous with 'state'. Government is the means through which the aim of the State, namely the removal of obstacles to good life, is fulfilled, and the form of government is mainly responsible for the quality or degree of removal of the hindrances to happy life of the individuals forming the state. The state comprises of the individuals living within its physical boundary; while the government is the sum total of the bodies which are employed to facilitate good moral life for all the individuals of the state by preserving the rights and duties of these people. It is the look-out of the state whether a criminal is punished or not and this task is accomplished through a well

regulated and well established institution called the government. The better the agency of government the more healthy and prosperous the society is, and the more the State is said to have fulfilled its objective.

The fulfilment of human desires, rational ones, is impracticable in the pre-social, pre-civil, or anarchic State because there the principle of 'might is right' predominates, but it is not so in a well organised and civilised society. If there is no government or authority above these human beings, who are never immune from human drawbacks and weaknesses, surely they cannot exercise or avail of even the right of existence and freedom. Every one will be literally drunk, a condition of life which will soon collapse and consequently necessitate the creation of a government or a body which may safeguard the rights of every individual equally without, of course, making unequal distribution of duties.

Thus we see that there is the urgent, immediate and cruel necessity of having a body of people, otherwise known as government, to see that the work in the society runs smoothly and that nobody's claims are hampered and none plays a despotic role. But the mere implanting of a body of people or government will not suffice. We find that a certain government does provide many amenities to the residents of the country over which its rule extends; while others fail to do so.

- ② Partly the civilisation of the country and partly the form of government are responsible for this inequality and dissimilarity. An instance will make it clear. In Switzerland, democracy reaches to almost perfection. There we see that people indirectly

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govern their own affairs and so naturally they know their interests best. The people are well educated in practical politics and so can manage their affairs quite satisfactorily. While in a country like Siam or Persia, the King is the sovereign authority though aided by a few councillors. There despotism is the rule and so naturally the voices of the people are not sounded properly in the legislature, executive or judiciary, as is the case in European and some other countries. The people, therefore, cannot enjoy full-fledged rights, peacefully and thoroughly. Hence the government is responsible for the maintenance of peace and order with a view to afford to every one of the individuals opportunities to develop his personality. And the fulfilment of this aim of the individual is facilitated or made difficult according to the form of the government under whose patronage the individual resides.

Every state or country has a government. But this term includes different though sister bodies, namely central, provincial and local, and the term government is used for each one of them. The aims and purposes of these institutions are diversified in extent but are similar in nature. All of them aim at making the state a better place to live in, and affording reasonable facilities to the individuals constituting the state. They are created because of the fact that it is practically impossible to govern a country, nay even a part or province of a country, from one centre satisfactorily and efficiently. The efficiency of administration is sacrificed. At least there must be some agents of that one government to carry out the ordinances

promulgated by it. And this task can well be performed through the local or provincial magnates or governments. But it does not mean that these local governments are mere agents or subordinates of the central government. Certainly they are autonomous bodies and the extent of their autonomy depends upon the form of government that the country as a whole has, and to some extent upon the customs, traditions and conventions of the nation. In a monarchical form of government, *e.g.*, Arabia, Persia, Afghanistan, etc., where the will of the monarch or the central government prevails, the local units have only a limited amount of autonomy while in democracies of the west the case is otherwise. The citizen has, consequently, double citizenship. He has to obey two sets of laws, two kinds of commands, two sets of officials, namely one belonging to his own provincial government and the other to the central government. The laws enacted by the provincial or municipal governments have the same sanctions and authorities behind them as the laws of central government. They command the same amount of respect as the laws of the central government.

Organs of Government.—A government comprises of three organs, legislature, executive and judiciary. The functions of the legislature are to enact laws after due consideration and deliberation. The executive has to give effect to the laws by finally sanctioning their enforcement and promulgation. Moreover, it can promulgate laws in the form of ordinances. The judiciary has to see that these laws or ordinances are obeyed by the people. It punishes

the offenders and thus applies the general laws to particular cases. An illustration will make this bifurcation of functions clear. Mr. Harbilas Sarda introduced a bill in the Assembly, or the Central Legislature of India, purporting to fix the age-limit for marriages, at fourteen years in the case of girls and eighteen years in the case of boys. This resolution was passed by the legislature after due criticism and consideration. After this the bill was sent to the Viceroy, or the executive head of the government, for his final sanction. On getting his assent the bill became a law or act of government. The Viceroy and his Executive Council issued copies of the law throughout the length and breadth of British India, expecting that the administrative staff, *i.e.*, the police, will see it followed in different parts of the country. If any one fails to obey the Act of Law, he is caught and tried before the court or judiciary, which consists of judges, after hearing the arguments for and against the guilty, it convicts him or acquits him as the case may be. In this way the government runs and sees that every citizen enjoys his legal rights without any interruption on the part of his neighbours. The citizen's rights are preserved only when these governmental organs administer or work efficiently and satisfactorily. If the legislature does not consist of sane, prudent, and foresighted persons who cannot judge the desirability or otherwise of a law, if the executive does not execute the law properly, and finally if the judiciary is not impartial and prudent, the individual cannot live peacefully and happily. Nay,

even the disability of one organ will hamper the progress of the personality of the individual and check his freedom.

according to Montesquieu *** Principle of Separation of Powers.**—According to (Montesquieu) the fundamental principle which a government should adopt in order to allow liberty to its individuals within legal limits is that of the separation of powers. Separation of powers means that there must be a balanced distribution of fundamental powers among different organs of government. By this means no particular organ of government can assume despotic powers without a check from other organs. For, it is argued that if the power of making a law, executing it and punishing its breach is vested in one person or one body of persons only, that particular person or body is likely to become so independent in the exercise of the governmental power as to make the whole administration irresponsible and unresponsive. In that case, there will be no scope for the individual to enjoy freedom of person, life or property. Therefore, to safeguard against such a system of administration, the powers of government are distributed between the various organs. In doing so, the principle adopted is that one body should make the laws, another should execute them and a third one should punish breaches of law. Thus, and thus alone, the citizen will be assured a fair treatment in the state. This division of functions between the three governmental organs, *viz.* the legislature, the executive and the judiciary, must, at the same time, be so arranged that each may exercise some kind of check upon the other, lest any one of

them should become so independent as to flout the wishes of the other. The legislature should have the chief power of making the necessary laws for the community. The executive should put these laws into force. The judiciary should decide the cases involving breaches of laws. At the same time, the whole system should be so arranged as to make it possible for these organs to collaborate their activities. For example, the legislature should also be given the power to control the actions of the executive in some way or the other. And in turn, the executive must also possess the power to control the legislature. In England, this is provided for in this way. Every legislative measure passed by Parliament, as the legislative body, requires the assent of the King who is the head of the executive, before becoming law. On the other hand. The House of Commons controls the activities of the Cabinet, the real executive by driving it out of office in case the former does not approve of the policy of the latter. In extreme cases of conflict between the House and the Cabinet on any important measure, the Cabinet may appeal to the King, that is, advise him, to dissolve the House and order a fresh election so that the real wishes of the electors may be ascertained with regard to the point under dispute. Such is the nature of check which the legislature and the executive exercise over each other, retaining at the same time, their respective powers. Again, as between the judiciary and the other two organs in England, every law passed by Parliament is binding upon the law-courts, but in deciding cases the courts

are not influenced by the legislature or the executive. Once a judicial decision is given by the courts, it becomes binding on the other two organs. Moreover, the House of Lords, the upper chamber of the legislature, also possesses judicial powers as it is the highest court of appeal in the state, though in actual practice when the House so sits only a few Law Lords and those peers who are really competent to sit as judges attend the sittings of the House as a judicial body. The King, who is the head of the executive, possesses judicial powers in that he has the power of granting pardon to the accused and the condemned.

Another illustration of separation of powers between the various organs of government may be cited from the constitution of the United States of America. The fathers of the American constitution were firm believers in the theory of separation of powers. This was partly due to the fact that under the rule of Britain the colonists did not enjoy freedom, and afraid of despotic or arbitrary rule they thought it better to divide powers of government between three bodies, each independent of the other two. The Congress is the legislative body in the U. S. A. It is independent of the control of the executive. The President of U. S. A. is the chief magistrate and executive head. His power to rule the country is not shared by any other body. He is the sole executive. His principal secretaries are merely advisers whose opinions are not binding upon him. Even if all his secretaries differ from him, he has fullest right to ignore their advice and

act as it pleases him. The Congress cannot turn him out of office, if he acts as the constitution empowers him. He derives his powers not from the Congress but from the constitution. He is elected by representatives of the people but not by the Congress. Still, there is provided a certain amount of co-operation between these two branches of government in the United States. All measures passed by the Congress require the President's assent to become laws. He exercises even an effective veto. For, if he refuses to assent to a law passed by the Congress, it can become an effective law only when it is again passed by two-thirds majority in each of the houses of the Congress. When once a President has refused his assent to a measure, it is difficult to get the necessary two-thirds majority in each house because, after all, the President is an influential figure in the country and even members of the Congress respect his opinions. The President is not a member of any of the houses so long as he is President, nor are his secretaries members of any house. Thus, there is a complete separation between the legislature and the executive, but here again there is some provision for influencing each other. For example, the President sends his messages to the Congress indicating therein what measures in his view are necessary to be enacted into law for the better government of the country. Through his personal friends in the Congress he influences legislation. As he exercises the power of making many appointments to service in the state, members of the Congress try to please him and support his views. In foreign policy, his

measures must receive the assent of the Senate. The House of Representatives may impeach him, for breach of the constitution, before the Senate. Thus, though the legislature and the executive in U.S.A. are separate, there is this system of checks and balances which keeps each branch in close touch with the other. As for the judiciary, America has got a very independent Supreme Court which derives its powers directly from the constitution, neither from the legislature nor from the executive. This was found necessary in view of the federal character of the constitution which was a sort of contract between the several uniting states, and as such it needed an independent court to decide cases of breach of that contract. Thus, any law passed by the Congress is open to a critical examination by the Supreme Court which is authorised to decide whether it is valid or not in the light of the constitution. There is, however, a system of check even between the judiciary and the other two organs of government. All judges of the court are appointed by the President. Any judgment delivered by the court is executed by the President. If the Supreme Court can invalidate a law passed by the legislature and assented to by the President, the Congress has also the power of setting up or refusing to set up courts subordinate to the Supreme Court and the President may refuse to enforce its decisions. Thus the three organs of government, while enjoying separate and distinct powers as assigned by the constitution, influence each other in the United States of America which has adopted the principle of

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separation of powers in the constitution, much more than any other country in the world.

As for the separation of the judiciary from the executive, the subject has got a very great importance. Granting that the aim of a government is to execute the will of the state, that is, to create conditions of equality and liberty and justice for all individuals alike, so that they may successfully develop the best in themselves, a question arises as to how this may be achieved. Every individual is constantly under the law which is enforced by the executive. If he is suspected of breaking the law, the executive arrests and prosecutes him. Herein comes the most important aspect of the governmental system. If the trying court is outside the influence of the executive which is a party to the case, being the plaintiff, the individual has every chance of a fair trial. If he proves himself to be innocent, the independent judiciary will immediately set him free. But if the judiciary is under the control of the executive, the former will naturally incline towards the latter, and the individual will have little chance of a fair hearing and a really judicious treatment. In all important countries with democratic governments, that is, with a system of administration which aims at safeguarding the rights of the individual, the judiciary is independent of the control of the executive. ✓

24/11 This independence is the key-note of good administration. (But in a country with an undemocratic system, the executive is particularly supreme.) For example, in India the separation of judicial and executive functions has not yet been completed

where there is no democracy

despite the fact that non-official public opinion has been demanding this much needed reform for over half a century. Here an individual suspected of breach of law is prosecuted by order of a magistrate who becomes a party to the case, as representing the executive branch of the government. The accused is then tried either by the same magistrate, or in some cases by another, but more often by the same. How can an accused expect a fair and impartial decision from a magistrate who acts as a judge in his own case, acting both as the prosecutor and the judge? Thus Indians suffer from a system which vests the executive and judicial functions in the same body. Of course, the higher courts are independent of the control of the executive. But these courts being appellate courts only, the individual has to spend enough money in preferring an appeal to them from the decisions of the magisterial courts. Such a system has been possible in India because of the irresponsible character of the government.

The principle of separation of powers has not yet fully developed in India. None of our legislatures possesses the final power to make laws. In the centre, the Governor-General, the head of the executive, has the power to refuse his assent to any measure passed by the legislature. Moreover, if the legislature refuses to pass any bill introduced by the executive, the Governor-General exercises his power of certification and promulgates the law certifying it as being necessary for the safety and public tranquillity of India. Again, the executive

is not responsible to the legislature which has no power over the budget. The high government officials cannot be tried by the ordinary courts in India. Any order issued by the Governor-General is binding as law on the judiciary in India. In short, the executive is armed with such wide powers that other organs of the government are, to a very great extent, subordinate to its authority.

The Legislature.—Every state requires laws or rules for the guidance of not only the individuals but also the several governmental functionaries. It is generally on the good or bad laws that the nature of a government depends. For that reason, the question of the constitution of the legislative organ of a state has an importance all its own. Who should be the legislators and how should they be appointed? In all states that have democratic governments, it has been conceded that the legislators must be the representatives of the citizens so that the opinion of the masses may be reflected in the making of laws. Another principle adopted is that these representatives must not occupy their offices for very long periods, because in that case they will not remain in touch with the up-to-date views of their electors and this might result in the passing of legislative measures with which people have no sympathy. Moreover, true representation needs periodical renewals of the legislature to give the voters an opportunity to (1) express their views with regard to new problems that might have arisen since the previous election, and (2) renew their confidence in their representatives or withdraw it in case the latter

did not act according to the will of the constituents.

Periodical elections
In this way, periodical elections to the legislature enable this organ of the government to keep in touch with the citizens. In some countries, where the parliamentary system of government prevails, as in England or any of the self-governing British Dominions, the legislature may be dissolved earlier than its normal term, if there is a radical difference of opinion between the cabinet and the House. This enables the electorate to pronounce its view as to which organ, the legislature or the executive or cabinet, correctly represents the view of the people.

The term of the legislature differs from country to country, varying from two to five years. The normal term of the House of Commons in England is five years. In France, the life of the Chamber of Deputies is four years. In India, the term of each of the legislatures has so far been three years but under the Government of India Act, 1935, it has been extended to five years. Though France has a parliamentary form of government, there is no earlier dissolution of the legislature because of the existence of many political groups none of which commands a majority so as to form a strong government which, in case of conflict with the Chamber, might appeal to the country by asking the President to dissolve the Chamber and order a fresh election. In India, so far there has been no real parliamentary government in practice, although the Government of India Act provides for earlier dissolution of the legislature in cases of conflict with the executive. In the United States of America, as in any other country with a fixed and

non-parliamentary executive, the legislature continues to sit for its full term.

As to the form of the legislature, most of the countries have adopted the bi-cameral system as against the unicameral system. England was the first country to introduce the system of having two houses or chambers of the legislature. This bi-cameral system was not the result of a deliberate act on the part of the British people. It developed because of the unwillingness of the barons or peers to sit with the representatives of the common people on terms of equality. That is, bi-cameralism was a product of mere accident. Since then the system has been copied by other countries in the world. There are, however, some states which have established only a unicameral legislature (of one house).

In a bi-cameral legislature, there is one house which is composed of the representatives of all the qualified voters. It is called the lower house or lower chamber, or the first house or chamber. The other house or chamber consists of either nominated members, or of life members, or of hereditary members, or of persons elected by a smaller electorate. It is called the upper house or the second chamber. In England the House of Lords is the upper house, consisting of hereditary peers, numbering about 700, and twentysix ecclesiastical peers or bishops and a few Law-Lords. This is the only second chamber with a majority of hereditary members. In most of the other countries, the second chamber is called *Senate*, as in France, United States of America, Australia, Canada, etc. In Japan it is termed the House of Peers.

In England, as said above, there are hereditary Peers in an overwhelming majority, though the representatives of the Scottish and Irish Peers are not hereditary. In Canada, the members of the Senate hold their seats for life. But in most of the other countries, the term of the Upper House is usually longer than that of the Lower House. And as a general rule, the Upper House is renewed partly at stated intervals. For example, in U. S. A. the term of a senator is six years. After every two years, one third of the Senators are elected. This is provided to introduce into that chamber a new element which might voice the changes in public opinion in case any have come about with regard to important matters of policy.

Bi-cameral legislatures have been introduced for some advantages which the supporters of the system find in it. Firstly, it is argued, the upper house is generally less numerous than the lower house, and is, therefore, able to discuss legislative measures more dispassionately and more thoroughly. Secondly, it revises the measures passed by the lower house and in so doing removes some of the defects left in the same. Thirdly, it introduces the necessary amount of delay between the passing of a measure by the lower house and the measure becoming actual law. During this interval, public opinion with regard to the merits and demerits of the measure is ascertained through criticism in the press, etc., and this enables the upper house to amend it in the right direction. Fourthly, the upper house presents a new point of view, being composed of persons with larger stake in the country

who are more elderly and represent a different electorate. There is thus an opportunity of an appeal being made from the lower to the upper house, the former being more democratic and liable to be swayed away by passions and the latter being a bit conservative and likely to present a more sober view. Fifthly, the upper house enables second consideration of the measure at a different time and thus removes the flaws in it.

Opponents of bi-cameralism say that if the upper house is democratically formed as the lower house, the former is unnecessary. If both possess equal powers, the upper house is a useless and expensive body. If the upper house is undemocratic, it is a dangerous institution and must not be allowed to exist in a democracy. It is likely to create unnecessary irritation and discontent.

On the whole, granting that there is much to be said for and against the system of bi-cameralism, the upper houses have worked well wherever their power has been less than that of the lower house. The upper house as a revising chamber has been able to improve upon the measures passed by the lower house.

With regard to the respective powers of the two houses, the lower house being more democratic and more representative of the will of the citizens, it has been generally given more powers than the upper house; particularly in money matters, the lower house has the final voice in most states. In legislative matters of non-financial commitments, the powers of the two houses are generally equal. And a measure which is passed by one of the houses must be passed

by the other house as well before becoming law of the land. Often times, disagreement arises between the upper and the lower house; they do not agree on the form and content of a proposed law. The amendments suggested by the one are not agreed to by the other. In such cases, which often occur, the constitution provides a method for resolving the differences. This method is not uniform for all states. In England, the House of Commons possesses the final voice in all money bills. Any bill certified by the Speaker of the House of Commons as a money bill goes to the King, even if the Lords do not approve of it, for His Majesty's assent and then becomes law on receiving Royal Assent. In case of other bills, if no agreement is reached between the two Houses, and if the House of Commons passes the same measure thrice, with an interval of not less than two years between the first and the final passing, the bill is sent to the King and on receiving Royal Assent it becomes law even though the Lords do not agree to it. Thus, the Lords possess only the power to introduce a two years' delay, but they cannot resist legislation.

In France, if there is a disagreement between the Chamber of Deputies and the Senate, each of them appoints a commission to solve the points of difference, and if as a result of joint deliberation but separate voting by the two commissions, agreement is not reached the bill is dropped. This shows that the Senate has got equal powers with the Chamber of Deputies. In U. S. A., the difference is sought to be removed by a conference between an equal number of representatives of the two houses. If even

then no agreement is reached the measure is dropped.

In almost every important country, *e.g.* England, France, U. S. A., the upper house exercises some judicial powers as well. The British House of Lords is the final Court of Appeal. The French Senate tries the President for high misdemeanours. The American Senate tries the President and Judges of the Supreme Court for breach of the constitution.

In almost every country the members of both houses enjoy equal privileges and rights. Except the members of the House of Lords in England, all legislators in all the important states get either salaries or remuneration for attending the meetings of the legislature. This enables them to devote their time more freely to politics, as they have not to think of earning their livelihood. It also enables poor persons, but otherwise able citizens, to take part in politics.

The problem of the method of election to the lower house in every state has a great importance. Almost all countries, with the singular exception of India, have introduced the system of adult manhood suffrage, the only persons excluded from the right to exercise franchise being those who are aliens. Many countries have also granted similar franchise rights to women. In England, the country is divided into single-member constituencies and of the candidates the one who secures the largest number of votes is declared elected, even though that number may not be an absolute majority of the total votes cast. This system of relative majority has often resulted in loss

of seats by those political parties whose candidates have obtained second places just losing the first by a few votes. Consequently, some politicians are seriously thinking of the problem of changing the system of election to insure that parties get seats in proportion to the number of votes secured by them in the whole country. The relative majority system, as of England, is likely to produce serious disparities in a country where there are minority communities and a system of joint electorate without any kind of reservation.

In Germany, there is the system of Proportional Representation which enables each political party to secure seats in proportion to the votes cast in its favour. Thus, no votes are lost and the legislature mirrors very approximately the will of the electorate. But this method encourages the springing up of spurious parties with no large following, a defect which does not arise in case of the relative majority system.

The Executive.—Another organ of the government is the executive, that is, the body that really governs the country. The chief business of the executive is to see that the laws passed by the legislature are enforced, that those who break the laws are brought to trial and that the day-to-day administration is conducted properly. The legislature meets only occasionally, but the executive functions at every moment. It is in charge of the actual administration of the state. Therefore, the form, composition and powers of the executive exercise the profoundest influence upon the life of the citizen in the state.

The form, composition and powers of the executive differ from state to state. Still, executives are generally of three kinds, *viz.* presidential, parliamentary and collegiate. These forms are found in the democratic states, *i.e.* the states whose administration is conducted according to the wishes of the people who have a voice in it. In those states that are undemocratic, the sole authority of actual administration is vested either in the monarch as in Afghanistan, or in a dictator as in Germany or Italy.

Presidential type of executive exists in the United States of America. There the President of the Republic is elected by *presidential electors* who are, in their turn, elected by the citizens. He is thus an indirect representative of his people. He holds office for four years and is re-eligible for a second term, but not for a third one. He can, therefore, remain in office for only eight years in continuation. This prevents him from becoming too absolute, for otherwise his powers are very great. He makes all appointments to important offices. He is responsible for the whole administration. He exercises a power of veto over laws. He makes treaties with foreign states, appoints ambassadors and receives foreign ambassadors. His principal Secretaries cannot go against his will. He is not responsible to the legislature, the Congress. But even then he cannot rule despotically because his term of office is short, he is liable to be impeached for breach of the constitution and he is anxious to be popular with his people in the country. Thus he is the

sole holder of executive authority in the United States.

✓ The parliamentary form of executive prevails in several countries, notably England, France, Canada, Australia, etc. In this kind of executive, the real authority is vested in a cabinet formed of the leader of the majority party in the legislature, or the party that can command influence with majority of the legislators. This cabinet holds office so long as it enjoys the confidence of the legislature and has to resign on losing that confidence. The legislature may show its want of confidence in the cabinet either by passing a definite *vote of no confidence*, as it is called, or by refusing supplies, *i.e.* by rejecting the budget presented by the cabinet, or by disapproving of some important measure introduced by the cabinet. In such a cabinet, there is the system of collective or joint responsibility, *i.e.* if any measure of any minister is defeated the whole cabinet resigns and not the particular minister alone. This assures solidarity in the policy of administration. In case of conflict between the cabinet or ministry and the legislature, either the cabinet may resign yielding place to another political party in the legislature to form a government, or it may advise the head of the state, as the King in England and the President in France, to dissolve the legislature and hold a general election to give the cabinet a chance to seek the opinion of the electors on the point at issue. In India, we are slowly evolving parliamentary type of executive, though it appears we shall take quite a long time at the present

pace to establish completely parliamentary institutions after the English model. A parliamentary executive requires for its success definitely formed political parties with clear programmes, so that when one party loses confidence of the legislature, the other party may step into power. It works most efficiently in a country where there are two political parties only, but when the number of parties, rather groups, in the legislature increases in such a way that no single group commands a majority, there are frequent resignations of the cabinet as in France. England successfully worked its parliamentary executive till the labour party became strong, but after that when the Conservatives, the Liberals and the Labourites, all became well organised, the cabinet system of government became less efficient, for no party could remain in power and office for a long time.

The chief features of parliamentary form of executive are :—

- (i) It rests upon the principle of joint responsibility of the cabinet members.
- (ii) It is based upon the formation of well marked political parties with definite programmes of their own.
- (iii) The cabinet must be small and meet regularly and often.
- (iv) The cabinet must rule only so long as its policy is supported by the legislature.

When no party is strong enough to form the government, it has to secure the support of other party or parties, by including some members of the

latter in its personnel. Such a cabinet is called *coalition cabinet*. As a general rule, coalition cabinets last for short periods only because they fail to evolve a policy which may find support of the parties for a long time. Such has been the experience of coalition governments in England and France.

The third kind of executive—the collegiate cabinet, is like the one that exists in Switzerland. It consists of a number of members, seven in that country, who are elected by the legislature for a fixed term and are re-eligible for election as long as they wish to hold office or the legislature likes them to continue. They need not belong to the same political party and may not among themselves agree upon a definite policy. Still they continue as one body because they simply carry out the wishes of the legislature whose paid servants they really are, at least so far as the theory goes. They, however, exercise considerable influence in the administration because of the vast experience of administration that they gather. Their views may not find acceptance in the legislature, but they continue in office for they merely do as the legislature commands them. This kind of executive is fixed and provides a system which does not suffer from excitements created by the differences between the legislature and the executive in countries with the parliamentary form of executive.

It must be mentioned here that in every country there is a distinction between the real executive and the nominal executive. For example, in England, the King is the nominal executive for he is the head of the state and appoints his ministers. But the real

executive is the cabinet which carries into practice its own policy, though in the name of the King. In France, the nominal executive is the President who is, in theory, the head of the state and appoints the members of the cabinet, but he exercises no real power all of which is left to the cabinet. In the United States of America, there is the real and nominal executive combined in one person, namely the President of the Republic.

Besides, in every country, there is a large body of officers of lower rank who administer the country. As they hold generally permanent posts, their importance in the government is in fact very great.

The Judiciary.—The third organ of government in every state is the judiciary whose function is to see that justice is done not only between one individual and another, but also between the state and the private citizen. It sees that breaches of laws are punished, and the administration is conducted according to laws. As this function shows, the judiciary occupies a very high position in the system of government. If the judiciary is to perform its function properly and in the best interests of the state, it must necessarily be composed of persons who discharge their duty impartially and fearlessly. An efficient judiciary must be free from the control and influence of the executive. This is generally provided by making appointments of judges based solely upon merits, by not reducing their emoluments during the tenure of the particular individuals and by subjecting the judges to removal from office not by the executive but by the head of the state on

receiving addresses from both houses of the legislature, in case the country has a bi-cameral legislature, praying for the removal of a particular judge on definite grounds of gross misconduct. The judges possess high legal qualifications and judicious minds. When they sit on the bench, they are free from any party considerations and decide cases on the basis of facts brought to light and in accordance with the law of the land. Often times the judges have to point out any possible defects in the laws made by the legislature, and their rulings provide a very valuable source of information on the subject of how the law works.

Every state has a kind of ladder of judicial courts, beginning with the lowest courts empowered to decide small cases involving less severe penalties, and a succession of higher courts to try more important cases as well as to hear appeals from the decisions of the lower courts. At the top of the judicial ladder is generally a High Court or a Supreme Court which besides being the highest court of appeal in the state, also acts as an original court for most important cases, particularly those that concern with constitutional laws. The highest court exercises general supervision over the lower courts. Thus uniformity is observed and a judicial system evolved for the citizens who find in it the real guarantee of their rights. If any citizen finds that his rights are being encroached upon by another citizen or even the state, he may appeal to the court, *i.e.* the judiciary to protect him. The court then orders that the

aggrieving party should appear and explain its conduct. The case proceeds and ultimately the court decides as to who is in the wrong and what penalty he is to pay. Thus, the judiciary performs an important function in the machinery of government of a state.

Local Governments.—In the modern nation-states, it is almost impossible for one single government to look after the particular interests of the various parts and to administer to the needs of the citizens. Therefore, for administrative convenience, the central government creates local bodies to exercise legislative, executive and in certain cases even judicial functions, of a limited character, within smaller territories in the state. This system of local government provides to an ordinary citizen the opportunity to exercise some voice in the administrative affairs of his locality, and trains him, in the long run, for higher administrative work in the country. In these days of large democratic states with millions of souls under one single government, it is imperative that the citizen must be guaranteed all amenities of life by an administration which is confined to smaller localities. What a citizen daily needs is better sanitation, lighting, easy and cheap means of transport, ample supply of clear water, education and amusements. These can be better provided by a body of persons whose attention is confined to a comparatively small area. To this body the citizen would willingly pay such direct taxes as give him a suitable return. In its efficient working he will be naturally interested. For these

reasons, every modern state has developed a system of decentralisation of its powers by creating different bodies of local self-government. In British India, this system was introduced by Lord Ripon who is, therefore, called the father of local self-government in this country. It was his wish that Indians should be enabled to learn the art of governing themselves and a beginning could easily be made by establishing district boards and municipal boards. Since then the system has developed very considerably, particularly after the introduction of the Reforms of 1919.

The problems of local government are almost similar in all states. And a study of these local government institutions is necessary to understand how a state is generally governed. It is in the working of these institutions that the citizen finds opportunities to give expression to his *civic sense*, by not only offering his services to work on the local boards, but also by willingly subordinating himself to their laws and general administration.

What duties are assigned to local bodies and how the function requires more detailed treatment which follows in the next chapter.

CHAPTER X

LOCAL GOVERNMENT

Introduction.—What brain is to man, local government is to a State. No monarch or central government, however despotic it may be, can even dream to rule independently without the aid of any other agency, whatever that agency be. A government to be a good one must voice the opinion of its subjects and the best means to achieve this goal is to encourage local self-government as much as possible. local government constitutes the real strength of a nation and it is through this component unit that the State can conduct its chief and most essential duty of removing hindrances to the good life of its individuals. Of course, it does not mean that the Central government is a nullity so far as its utility to the communities and individual members is concerned but that owing to the absence of these competent units, that is, the local magnates, a government would shatter to pieces and would not last for a single day. History is the best testimony of this statement as it does not record any incident to the contrary. Now-a-days the political reformers do not think of world peace alone or to avoid wars but also to satisfy the demands of the individuals constituting nations and to make states better places to live in. Every civilised nation of the day encourages, maintains, finances and reforms its local administration to make the life of its members ✓

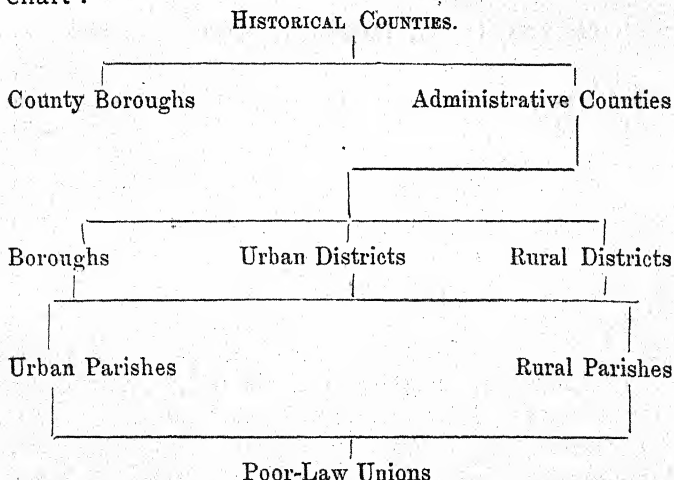
longer, healthier, happier and in all respects comfortable. Nations actually compete in affording comforts, pleasures and conveniences to their peoples. India is no exception to the general rule; but it is backward in this sphere as in several other respects, save perhaps her philosophy, literature, music, and medicine, in comparison with other nations in the field of local self-government and others also. Her constitutional history under the British supremacy, and especially since the Sepoy Mutiny, goes to prove this fact.

History.—Local government, as an administrative organ, does not see for its origin either in the preachings of the philosophers like Manu, Yajnavalkya, Kautilya, Plato, Aristotle, Rousseau, Green and others, or in the conquests of Alexander, Chandra Gupta Maurya, Samudra Gupta, Napoleon, the Normans, Aryans, Muslims, Danes, and others. It "is as old as the hills." Its origin and growth is practically synonymous with that of the government itself. If we look into the annals of history we find that everywhere in the world there was some kind of local government at least, though in different forms. Naturally, when an upstart or a ruler assumes the reins of administration he entrusts the work of governing parts of his dominions to a person or persons to do the job in his name and does not rule arbitrarily and independently. So the very introduction of administrative machinery involves germination of the institution of local government. In ancient Greece various forms of government were prevalent, the chief among them monarchy, oligarchy

and direct democracy. But these forms mainly concerned with the central government, the rest, that is the villages, cities and towns, enjoyed almost self-government. The village affairs were squared up by its assembly and similar was the case with cities and towns. These assemblies were representative bodies and looked after the local affairs of the localities concerned. Their resolutions and laws were recognized by the government. They were not anti-government but quasi-government institutions. Perfect autonomy was granted to every village in Greek city-states, though not in monarchies and oligarchies. In Rome, the Emperors were undoubtedly more or less despots but they never contrived to rule independently without the advice and assistance of some other person or institution, through self-government in local sphere. The government officials ran the whole show and were under the strict control of the central government. In England also there was no one man's rule. The King alone did not administer the whole country. The country was divided into provinces each administered by a governor or chief. In the villages and cities people looked after their own local affairs, of course, under the supervision of the government officials. Then under the medieval feudalism, the system of sub-infeudation was more or less that of local government. The feudal lords and their subordinates maintained peace and order in the country on behalf of their overlord. The element of representation was totally absent but local government was there. Things were to be decided from above and not from below. Other

countries of the world which were civilised in ancient and medieval ages and which had some established form of government, also had local administrative organs in one form or the other. So far as India is concerned, writers are not of one opinion on the question of representation of the inhabitants in the local sphere. Some like Dr. R. K. Mukerjea, Mr. Jayaswal, Dr. Bhandarkar and others hold that self-government is not a creation of the British rule in India but it was prevalent in good old days of the Hindu predominance. But there are writers like A. Berriedale Keith who says "Hence India offers nothing that can be regarded as a serious theory of politics in the wider sense of the term," and the authors of the Indian Statutory Commission say that local government in India as a representative, autonomous and responsible institution is a British creation. Much can be said on both the sides but as a matter of fact the latter view does not seem to be true to its very letter. The literary records of ancient India indicate that there was self-government to a very great extent. The village was the administrative unit. People flocked together under big trees or in the halls in every village, city or town. There were autonomous and republican states in the time of the Buddha and official control was not rigid. Under the Afghan and Mughal rulers, as sometimes in the Hindu period also, the official control was strict and self-government was not so full-fledged as in ancient days. The villagers were still independent in the management of their village affairs.

Composition.—Local magnates are named variously in different countries. Everywhere there is hierarchy of local bodies, the smallest unit being the village. These bodies are representative of the residents in almost every civilised country; but they differ in the degree of autonomy that they enjoy in the management of the local affairs of the communities concerned. In England, there is a labyrinth of local authorities, but they are not hierarchical as in France. The parish, for example, has not to suffer from the autocracy or control of a hierarchy of officials but only of the central government at London. The unique and cumbrous system of English local government can be best illustrated by the following chart :—



At present there are five main areas of local government, namely, the parish, rural district, urban

district, borough and county; Poor-Law unions have now ceased to function as local institutions. The urban as well as the rural parishes have councils consisting of the elected representatives of their inhabitants. The Rural District Councils consist of representatives of parishes, each parish of 300 inhabitants sending one councillor. The chairman of the Council is also the justice of the peace. The Urban District Council is practically similar in constitution and powers to the Rural District Council. These Urban and Rural Districts make up a County which is the largest local government unit. The administrative County is administered by a County Council consisting of a chairman, aldermen and councillors. There are permanent officials appointed on non-party lines. The Borough acts through a Town Council. It is administered by a mayor, aldermen and councillors. All these officials are elected, some by the people and the rest by councillors.

In the continent the municipal governments in various countries follow, more or less, either the French or the German model. The French Republic is divided into 90 departments consisting of 3024 cantons. The canton is a group of communes forming an area for judicial and electoral purposes. The commune is the basic territorial unit of local government. Every commune has an elected council, an elected mayor and assistant mayor or mayors. There are arrondissements or districts which form administrative sub-divisions of the department. Each arrondissement has an elected council presided

over by a sub-prefect, who is appointed by the central government at Paris. The department has an elected council-general headed by a prefect who is a government official. In Germany, the city government differs from state to state. Roughly, however, the whole German municipal system falls into three great divisions. The first is the magisterial type of government where the administrative action is taken by a majority vote of the magistrates. These cities have plural executive and the Burgomaster carries out the decisions of the administrative board. The second is the mayoral form of government in which there is a Burgomaster and an elective city council. The Burgomaster exercises administrative powers on his own responsibility. The third and the last is the council form of government which has elective councillors. It must be noted in this connection that Germany is passing through a transitional period under the Nazis and at present the whole machinery of administration is completely centralised.

In the United States of America there are towns and townships. These have elected councils and a few select-men. The smaller urban communities which have not reached the status of cities, are known either as boroughs or villages. They are established by the county board. Some of the states create local areas for special purposes, for example, school districts, public health, drainage, road, water, irrigation districts, etc. The cities have one or the other of three systems of government, namely, the mayor and councils, the commission and the City manager plan. For administrative purposes, Japan

is divided into 6 prefectures, 3 urban and the rest rural. Tokyo, Osaka and Kyoto are urban prefectures. Each prefecture has an unicameral legislature and a governor, appointed by the central government. The prefectures are divided into cities, towns, and villages with their representative councils and executive heads.

India.—In India the local administrative institutions have not yet reached the western system. It is still in a transitional stage and will most probably soon come to the western standard. They are more or less in an adolescent stage, as India itself has just come out of the darkest period of her history so far as social and cultural aspects are concerned. The village is the administrative unit. Here villages have their *panchayats* consisting of a *sar-panch* and *panches* who are selected from amongst the villagers. In the United Provinces the *panchayat* is to consist of 5 to 7 male residents of the circle to which its jurisdiction applies. This circle may consist of a village or several adjoining villages. In this province alone the members and the president (*sar-panch*) are appointed by the district officer after informal consultation with the residents of the circle. In other provinces the members and their president are elected by the residents themselves. The *sar-panch* is appointed from among the *panches*. The *panchayat* is required to record or register its proceedings for which purpose the *panches* may appoint a clerk, otherwise the *sar-panch* or any other *panch* may serve the purpose. In India, the District Board is an unique body. It is

like a rural district of England and has jurisdiction over rural areas. There are 48 such boards in the United Provinces, corresponding to 48 districts. A District Board consists of a certain number of elected members varying from 15 to 40, and not more than two nominated members. The minorities are also given representation either by election or by nominations. These members elect a chairman from among themselves or from outside. No government official can be elected chairman. The term of the board is three years at present. The board, as a corporate body, can sue and be sued; acquire, hold and transfer property and can enter into contracts. Municipalities are to be found throughout India. At present there are 85 municipalities in the United Provinces. Their jurisdiction is urban and every municipality with a population of 100,000 or more is *ipso facto* a city. The Municipal Board consists of an elected or nominated chairman, a prescribed number of elected members and a certain number of nominated ones. Most of the municipalities have communal representation and so there the power of the local government to nominate is restricted to two members. Almost every class of interest is represented in the board either by nomination or by election, for example, the Marwaries in Cawnpore and the Europeans in Lucknow, Mussoorie, Naini Tal and Dehra Dun. In the year 1931, out of 1142 members 942 were elected and the rest were nominated, the officials being only 13 in all. The cities of Cawnpore, Allahabad and Lucknow have 37, 38 and 39 members respectively. The non-city municipalities have

smaller boards not exceeding 20 in strength. Some municipalities have only 7 members.

Administration of Capital Cities.—Curiously enough, the capital cities of all the civilised states have a separate form of government. For administrative purposes, London is divided into the City of London, County of London and the London Metropolitan District, each having different forms of government. The composition and functions of the County Council alone resemble those of other ordinary cities in several respects. The administration of Paris and the Department of Seine differs from that for the rest of France. There is the Prefect of the Seine, the Prefect of Police, the Municipal Council and the Council-General of the Department of Seine. It is divided into 20 arrondissements. In form the government of Berlin is federal but in fact it is centralised. It includes the central or union government of Greater Berlin, and the governments of twenty administrative districts. These districts are further divided into precincts. The general government of New York consists of a Mayor and his administrative staff, the Board of Estimates and apportionment, the Board of Aldermen and several other boards for various other departments. Tokyo is one of the three Urban Prefectures (Fu) and thus differs from the Rural Prefectures. It is unlike other prefectures, urban and rural, in as much as it has a peculiar system of police administration which is placed exclusively under the Metropolitan Police Board. In India, the four great cities of Calcutta, Bombay, Madras and Karachi have separate form of municipal

administration. Each of them has a corporation, different from ordinary municipalities which are in other cities of the country. These corporations resemble in their general features but differ in details. The mayor is the figure-head of the corporation. The corporation has an elected council and the administrative work is done through various committees of the council.

Municipal Functions.—In the countries of the west all the affairs of the cities, towns and villages are conducted by the municipal governments. The citizen is to obey the municipal law as he obeys a decree or law of the central government. Almost all take interest in the municipal administration of their locality. They encourage, criticise and support the local magnates and do not grudge their authority. The keen interest that is shown in the municipal elections is illustrative of the fact that people want to reform and serve their community. In its turn, the municipality also affords all possible comforts which are in its reach, to the citizens. It indirectly educates the population to be politically minded. Of course, much depends upon the masters of the country, at least in the sphere of the education of the people. Indians have not yet advanced to this stage. Still the illiterate masses, nay, some literates also, think that the municipal and district boards are useless and therefore they discard them. They never seem to mention a local board except in a tone of more or less unconcealed contempt.

Their Divisions.—Broadly speaking municipal functions fall into two heads; namely, direct services ✓

to the public and indirect or over-head functions. Under the latter head the municipalities are required to conduct elections, to provide legal advice and action, to control personnel, to assess property for taxation, to plan, control and audit finances, to collect, safeguard and disburse public money, to transport employees and materials and finally to supervise public property. The municipalities in India do not perform some of these functions. The next category of functions is important in the interest of public welfare and are sub-divided into three groups: in the field of cultural development, in the field of social and physical control, and in the field of public utilities. Under the first group fall the functions of providing instruction, library and art services and recreation parks. In the field of social and physical control the municipality is to look after the indigent, prevent and repress disease and anti-social conduct, and suppress fire, to correct offenders, to plan city development; and finally to regulate structures and traffic. Under the third and the last head come the functions of providing and regulating water, heat, light, public transportation and highways; collecting and disposing of wastes, and, finally, regulating food supplies through the creation of healthy markets.

Public-health and Sanitation.--The municipal functions in India when compared to those of the west are based on the same principles, but are not executed in that prompt and efficient manner as in the west. The local magnates are expected to, and they do, promote welfare, provide amenities to citizens and strengthen the administration of government.

Here are, of course, certain departures from the western practice, owing to local conditions, for instance, police is not under the municipal control. The Indian municipalities generally perform those primary functions alone which relate to public-health, conveyance and instruction. Public-health is deemed to be the most essential function that a local body is expected to perform. But in India the municipalities do not provide it on the level of the western countries. There cholera, plague, small-pox and other diseases are not considered as resulting from the will of a supernatural being. The people are well-educated to understand and adopt preventive measures to ward off the dangerous, infectious diseases as far as possible. Statistics show the decreasing death rates in the west and high death rates in India. Death rate, especially infantile mortality, in India is probably higher than in any other civilised country and, curiously enough, it is less so in rural areas than in urban ones. How is this to be explained? The explanation is to be found in the fact that municipalities and other local boards do not adequately provide for the maintenance of good health of the citizens by encouraging and financing the public-health and sanitation departments.

In India, municipalities have generally provided for adequate means of the supply of water and good system of drainage in many parts of the cities; but housing schemes and proper management of city are regrettable. People live in congested areas and a labourer with his whole family in great industrial

centres lives in one single small room which can hardly accommodate two beds. What can be expected from such areas? Nothing but short life of the residents. Women belonging to poor classes of society hardly bathe once a week and really these unhealthy conditions are responsible for the high rate of mortality. The cities have undoubtedly some advantages over rural areas in this respect. This is because of the fact that in cities it is possible to counteract and reduce the high death rate by the joint effort of various preventive agencies and quick medical aid. But in order to avoid this great evil works of public utility must be financed, improved and encouraged as in European countries where there are special branches of health services and the governments actively participate in combating this evil. The methods of decreasing death rate are to educate the residents regarding the dangers and symptoms of different diseases by means of lectures, demonstrations and voluntary associations, medical relief, for example, free and adequate supply of medicines in hospitals, nursing dispensaries and isolation wards. In these respects, Berlin is probably far ahead of all the municipalities of the world. India does not adequately afford these services to her inhabitants. Sanitary facilities are not based on the modern lines and are not at all adequate.

Water Supply and Drainage.—Pure water is one of the most important necessities for the maintenance of the health of the people. The citizens in order to save themselves from diseases must use fresh and filtered water. The supply of good water to

the localities depends upon the municipalities. The west presents an excellent system of water supply; but in India it is otherwise. The municipalities do not supply water through taps in every city, and wherever they do supply it is inadequate and not well filtered. The drainage system as is prevalent in Indian cities is not satisfactory. In streets and lanes the offensive smell of the accumulated filth before houses is very unpleasant to the passer-by. Every lane is not provided with drains and so in such places mosquitoes and other injurious insects find good abode. Where there are drains there is scarcity of water for quick removal of the filth lying in them. The number of sweepers to clear these drains is not sufficient to meet the demands of the city and sometimes the drains are not washed for days together. Every day one will find some complaint or the other about the inadequacy of the drainage system of one city or the other, ventilated through the columns of a local newspaper. Of course, much depends upon public education and a spirit of civic duty among our people. For, unless the citizens take an active interest in the affairs of the local bodies which are the best training schools for the art of government, begin as they do with smaller localities and problems of life in which the masses are directly and daily interested, the local boards cannot serve them to the best of their means. But in the matter of imparting the right type of education, including the teaching of civics, the local boards are also responsible, and not the residents alone.

In the west, not only primary but also secondary education is more or less compulsory, and in one country at least, namely Switzerland, the teaching of civics is one of the most important and compulsory subjects. Hence, the citizens possess a high sense of civic duty which impels them to attach the greatest importance to the working of local government institutions. They understand the value of sanitation and its effect on general health. Therefore, system of drainage and water supply is simply excellent, of which the local bodies as well as the central government may feel legitimately proud. In India, there is a great scope for not only extending such systems but also for improving those that already exist, and it is the duty of every good citizen to help in bringing about much needed improvements which are so essential in the interest of the citizens themselves.

Roads, Bridges, Light.—In the construction and maintenance of roads in our cities, enough has not been done by our municipalities. The condition of these roads during the rainy season is beyond description. This season a road is repaired and the next season it goes back to its former condition. No sooner one is outside the main road, which never runs beyond the areas occupied by wealthy gentlemen, than one finds that one is to face many stones and storms. The road is never free from cow-dung or dung of horses and other like animals even in the most advanced parts of the cities. So far as lighting on the roads is concerned, the non-electrified areas have light of hardly any use. The only use of such lamps is that a man sees that there is a lamp

and nothing more. Electrified areas, especially in the interior of the cities, are in no better condition than ordinary lamp areas along the road. Such places are good hunting grounds for robbers and thieves. The conditions of the villages is in this respect, as in all other respects, worse and there are not even third class roads at all. People have to cross small streams by swimming as the bridges are only a few. Of course, this encourages swimming among the inhabitants but the method adopted is not the proper one. The municipalities also do not provide swimming tanks and the like, though in this respect the district boards must be thanked to encourage this art at the cost of lack of conveyance. Here the best roads and bridges are not better than the worst ones in a western city.

Housing and Poor Relief.—Probably India preserves the greatest number of ancient buildings and monuments of all countries of the world. It still preserves the old bazaars, cities and streets which are worth seeing so far as the antiquity is concerned but not at all so with regard to their sanitary condition. If one passes through such lanes for about a mile one is sure to invite suffocation. It is only in the new bazaars that one likes to pass through and even they are not better than ordinary bazaars in western cities. The cities are much congested and the houses, especially those built on ancient models, are not well ventilated. Town planning on western fashion is practically unknown to India save in certain big cities, and even there in certain newly populated areas. The Improvement Trust is trying

much to ameliorate the condition but it has not yet achieved the full purpose for which that department was introduced. The local bodies do not provide for orphanages, sanitoriums and the like institutions which are found in great abundance in western countries.

Privacy and Decency.—The municipality is also to look after the morals of the citizens, especially in Indian society. But it has suffered too much in big industrial cities like Bombay due to overcrowding, character and environments of industries and the charms of mixture of various races. Privacy and decency cannot be observed. Sanitation is bad and housing poor. There are skyscrapers and accommodation is small. It is not merely in the unavoidable mixing of the sexes under conditions of overwrought nerves and tissues in high industrial labour, that we must find the cause of the social evil which pollutes and offends the whole moral atmosphere of the city; even the amusements and recreations like cinemas contain in them the germs of the greatest social evil. Even the superior drama in the most orthodox theatre has not escaped the prevailing spirit of modern industrialism. Municipalities must undertake to provide better and healthier supply of such places through their own agency. The mixture of races is more observed in port towns. In their own countries these foreigners have a higher code of morality which they habitually observe in practice, but outside they seem to consider themselves free from obligations which, at home, they would not dare to offend

against. By their example other large industrial centres also evolve the one great evil of modern city life, that is, prostitution. The municipalities must plan to ward off this great evil from the society in order to make it a healthy one.

Education and Recreation.—Education is the only one function which furnishes the best index of the vitality and vision of a city government. India possesses the biggest illiterate population of all the civilised nations of the day. In England, public health is the primary function of local government. It occupies in the minds of officials and students of local government a place analogous to the one accorded to education in American cities. The reason is found in the fact that in a government for the people health may be the centre of attention, but in a government by the people, it is clear that education must take precedence if the people are to mould their own environment. In India, the municipalities do not make sufficient provision to educate the masses; of course, in certain places primary education has been made compulsory, but it will take almost half a century for India to have an educated population of the western calibre.

The municipalities in India have not yet constructed sufficient number of parks and recreation grounds. For example, in Lucknow there are hardly a dozen parks owned by the municipality. Poor-relief also has not yet attracted the attention of the municipalities in India, quite contrary to the practice prevalent in European countries.

Financial Aid.—The income of the local units in India is derived from two sources, namely, taxation and government grants. Under the head of taxation may be included taxes on persons, income, fixed property, profession, animals, vehicles and trades. In the western countries also almost the same system prevails. Thus we see that the municipalities in India are far behind the western standard. They do not provide so much amenities as the municipalities in the west, and in this respect Germany beats the world record. There the local government provides even the coffin for dead bodies, and the like services. The central governments in all those countries aid the local bodies financially and try to encourage them in every respect. Seldom does a financial difficulty arise, and the people also are well-educated and do not grudge making personal contributions. Here, in India, almost every local board has to face the great financial difficulty and the government also does not encourage them much. The country is poor and so a large part of the revenues, whatever can be collected, goes for the maintenance of the military for defence of India, which is the first and the foremost necessity of a country under foreign rule. It is not entirely the fault of the government of the day; it is also a result of the economic depression in the whole nation, that the municipalities have not sufficient finances to promote public health and other services. The poor management of the municipality is also responsible for the lack of adequate services. The civic consciousness among masses and the number of boards have not yet reached that

limit which the western countries have already passed.

Central Control.—The English system of central control is half-way house between the rigid system as is prevalent in the continental cities and the flexible American system. Unlike the practice in the continent and somewhat in India also, the central control in England is exercised directly by the central department, or it is non-hierarchical. The English system does not lodge most of the controlling jurisdiction in any one place but scatters it around among various central departments, which is not the case in India and in the continent. There is no one single department of the government at the centre responsible for the local government as the Ministry of Interior in France, the Ministers for local self-government in Indian provinces and the Ministry of State in Germany. Again, in England, there is no system of administrative control and there is very little judicial protection as against ill-advised action on the part of the controlling authorities. There, the local bodies initiate and carry out their own policy subject only to such powers of direction and control as are retained by the central government. They recruit their own staff only subject to regulations as to qualifications of these recruits. They collect their own revenues. They form a detached system of government and are not an entirely subordinate part of the governmental machinery. In the continent, especially in France, principal local authorities are not the servants of the elected representatives of the electorate but are the deputed paid servants of the

central government. The will that operates in the sphere of local government is of the central government and not that of the people of the locality. Prior to 1918, the system in India was on the French model, but since then it has been modified and, in theory at least, it follows the example of England.

In India, the provincial government has the extensive power of creation, suspension, abolition and suppression of any municipality. Generally, the district officer and the divisional commissioner are empowered to examine and criticize the workings of municipalities. They have the power of direct action when they feel that public peace and safety is endangered. The provincial governments can create and modify the municipal boundaries. In case of suspension and supercession, the local government can appoint and empower one of its salaried officials to continue the functions and duties of the municipality. The provincial government alone can fix the proportion of the elected to nominated members. It also nominates members to the board and can remove the disqualification for membership. The provincial government has the power over the personnel of the local units. If a chairman omits to carry out the resolutions of the municipal board without sufficient reason, the government can dismiss him and appoint his successor. It can ask the municipality to appoint a municipal engineer and a public-health officer and in case the municipality does not make these appointments, they can be appointed by the government without any reference to the municipal board. The above two officers and

government officials who are deputed to municipalities cannot be dismissed by the latter without the approval of the government. The municipality cannot reduce or abolish any tax without the approval of the provincial government. Also, for the imposition of certain taxes, for example, pilgrim tax, and when the municipality is to borrow money for its own use, the previous sanction of the government is indispensable. The sanction of the government is necessary when the municipality wants to exempt any part of its jurisdiction, or a particular individual, from municipal taxes. Every board has to submit its annual budget to the local government which has the right to alter it, provided enough provision has not been made for certain liabilities. The government grants must be spent for the specified purposes and within a stipulated period. The government can suspend the execution or cancel the orders of the chairman of the municipal board or the resolution of the municipal council. It can also suspend or cancel any license granted by the municipality, if the grant of such license causes public danger. In case the municipality does not execute the order of the local government, the latter can appoint an officer for the same, at the cost of the municipality. In emergency cases, the district officer himself can inspect municipal property, call for information or inspection of the budget, and cancel or suspend the orders of the chairman or the resolutions of the board. He can also order the performance of any action which he considers emergent in consideration of public safety. The

local government exercises certain control over the district boards. It is responsible for the creation, supervision, abolition and composition of the board. It lays down the qualifications for voters and members, and can alter or modify the territorial jurisdiction of the board. It nominates certain proportion of members and imposes new taxes, abolishes, decreases or increases the existing taxes. It scrutinises the budget and can suspend or cancel the orders of the board or of its chairman. The provincial government exercises almost the same power over municipalities, district boards and village *panchayets*.

Franchise, Parties and Electorate.—In western countries all members of the society, except paupers and lunatics, have votes, in the local elections. and so the franchise is wide. The electorate is literate and can prudently exercise its franchise at the booth. People know the value of a vote and election. Still all of them do not turn to record their votes. In America, voting has been made compulsory for every one. In India, restrictions are not few on people to exclude them from being voters. Only a small proportion of the residents are entitled to vote. For a municipal election a voter must be a British subject of 21 years of age and must have resided in the vicinity for at least twelve months. He must have a property qualification and be a municipal tax-payer. Undischarged bankrupts, lunatics, those who were sentenced to imprisonment for a non-political offence and those who have not paid certain specified municipal dues are not allowed to vote. A university graduate is eligible to vote. A candidate for election must

have some educational qualifications and property also besides the above qualifications. He must not be a dismissed government or board servant, or one debarred from legal practice. The chairman must not be a salaried servant. In the district board elections only such persons can vote who possess land with an annual rent of Rs. 25. Every member of an undivided family, every permanent tenure holder or fixed rate tenant, every under-proprietor and occupancy tenant who is liable to pay rent of not less than Rs. 15 per annum, every other person who resides in rural area and who is assessed to income tax, circumstance or property tax, are also voters. A person who has passed the school final examination or the vernacular middle examination is eligible to vote; the voter must be a British subject of 21 years of age. Women are allowed to be members of the board. The qualifications for members and chairman are the same as in municipalities. The electorate is generally illiterate and does not know how to utilise the vote in the proper manner. They cannot judge the respective merits of the candidates in the election. Only those who are educated can understand the value of election. People vote on party lines which are totally based on communal or sub-caste system, and not on any principles as in the west. The members in the boards also vote and form party on communal or caste grounds. Among the members, generally differences do not arise from honest divergence of views over questions of policy as in the west but from purely personal enmities and ambitions of the members. In the west, there is

strict party system based not on sentimental but on rational grounds. These principles create parties, but here, in India, members have not yet been aroused to the proper sense of nationalistic view.

The object of parties in an administrative system is that different points of views on a particular measure may be presented and not to obstruct smooth working. Honest party differences do not, therefore, result in unnecessary excitements. We, in India, have to develop a healthy *esprit de corps* along with differences of opinion, so that the ultimate good of society be attained, without sacrifice of efficiency. It must, however, be borne in mind that the national parties need not have their counter-parts in local politics.

CHAPTER XI

INTERNATIONALISM AND THE LEAGUE OF NATIONS

Modern states are nation-states. The term *nation* signifies a population speaking the same language, having the same customs, civilisation, and one government. The area of a nation-state is limited to the sphere of influence and control of its government. It aims at raising itself to the highest position as all the other states of the world. The individuals constituting the nation-state endeavour to make it most prosperous, and if necessary, even at the cost of other neighbouring sister nations. This is intense nationalism. It aims at glorifying the nation and at suppressing other such states. The teachings of some political philosophers like Hegel, Bernhardi and others that nation-states are the best forms of states and must be encouraged, tended to *militarism* and *brutalism*. It was owing to the preachings of such politicians and statesmen that the world-war (1914-1918) was brought about. They limited the scope of human action to the development of the state and totally ignored world peace. The nation-state based on such ideals ever wants to assert its power by some means or the other. It will not look to the benefit or convenience of other sister states. It would only contrive to make itself a better place to live in and to expand

its territorial jurisdiction. But all nation-states do not always have this self-ego in them. Some of them take into consideration the feelings of other nations also. They would think of the comforts of the individuals of other nations as well. The best indication of this is that foreigners are always cordially treated and welcomed by these states. A nation-state well understands that if it jeopardises the interests of other states it will also be similarly treated by them. So that intense feeling of nationalism which made the state eternal and omnipotent, and created such disasters as the French Revolution, the Napoleonic wars and the world war are softened to-day by the feeling of universal brotherhood and internationalism. The commerce, industry, trade, literature and, we may say, every art of a state cannot flourish without mutual co-operation with other states. Like an individual a state also cannot have self-satisfaction, self-realisation and self-determination if it stands quite aloof. It may produce the largest amount of, say wheat, but what is it to do with the huge surplus that is left after consumption by its citizens? It has no other recourse than to export that commodity. Here comes in the necessity of exchange and ultimately of co-operation. A state, therefore, cannot remain in isolation, otherwise nothing but stagnation would ensue. The economic, social and political constitution of the world is so interwoven that one state has to depend upon another state in the fulfilment of its aims. Again, in such an exchange of commodities, thoughts, etc., among nations, there is every possibility of the clash of interests between

them, which naturally results in regular warfare. Wars are always the outcome of mutual jealousies competition, rivalries, and ill-treatment of the nationals. Even two brothers cannot usually live amicably throughout their lives, not to say of the nations which comprise of so many thousand brothers and sisters. Moreover, modern scientific discoveries and the consequential modifications in economic and social relationships have necessitated larger and larger political combinations and unions. This is evidenced by the fact that the modern wars, as opposed to ancient and sometimes medieval wars, are never fought between two nations only, but between many nations. This is the result of the increased and improved means of communication and intercourse in the modern world.

But in order to secure world peace and to set the individuals free to think and act independently without the interruption of foreigners and with a view to make this earth worth living on, the nation-states must view their interests in terms of 'world peace' alone. Internationalism must be the cornerstone of every individual's thinking. Wars which are decidedly a menace to the humanity must be avoided as far as possible. Every nation must be independent and no state should play a particularly prominent role in the world politics. With these ends in view and some others as well, President Wilson of the American Republic, could materialise his aim by inaugurating the League of Nations just after the World War. This League has functioned and partly achieved the aim for which it was created.

Still the masses are not so well educated in politics and economics as to think of universal peace alone, and not of elevating their respective states. Western civilisation has made the people know that diseases like plague, cholera, etc., are not the creation of heavenly agencies, but they can be easily avoided if necessary, precautionary steps are taken. But it could not yet teach that wars also fall in the same category. The modern League which is a product of the western civilisation aims at propagating this mission but it has not yet succeeded. It will probably take some years at least to universalise this political dictum that wars are man-made and most pernicious.

Aim of the League.—The League of Nations has been established for two purposes, *viz.* to secure peace between the various nations in the world by making them agree to observe certain laws and rules of international dealings, and to make future wars impossible. This double aim of the League is clear from the opening paragraph of the Covenant in which the signatories state that they agree to the Covenant,

“In order to promote international co-operation
and to achieve international peace and
security,

by the acceptance of obligations not to resort
to war,

by the prescription of open, just and honourable
relations between nations,

by the firm establishment of the understandings
of international law as the rule of conduct
among governments,

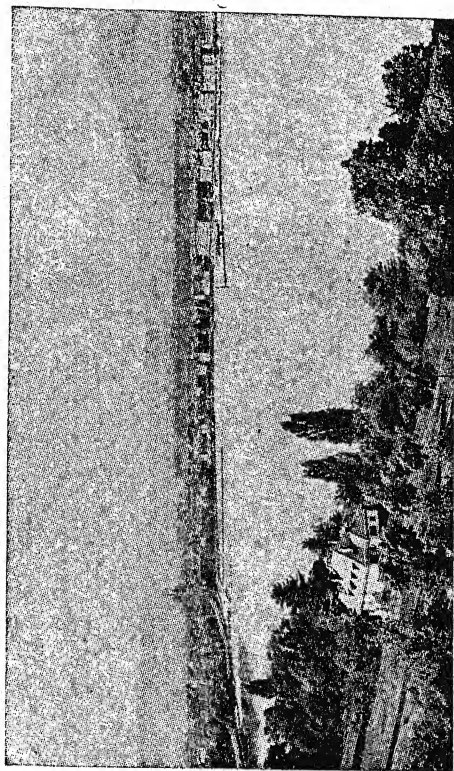
and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another."

This is a noble aim, and if all nations accept the obligations indicated above they will not have to go to war and destroy each other for settling their mutual disputes.

Membership of the League.—In the beginning, all the signatories to the Peace Treaty and some of the powers that had remained neutral during the war but were invited to accede to the Covenant, became members of the League by signing the Covenant. For future membership of the League, the conditions of membership are mentioned in Article I. "Any fully self-governing State or Dominion or Colony not named in the Annex may become the member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval, and air forces and armaments." If a member, a nation, ever desires to discontinue its membership of the League it can do so after giving two years' notice of its intention, provided it has fulfilled all its obligations at the time of withdrawal. This shows that the membership is not a forced but an optional matter, for nor nation can be compelled to accept the Covenant and become a member, nor it can be compelled to remain within the League if it chooses to go out of it. There were

only 24 States that had joined the League at the time of its establishment in 1920. Since then, other States, realising the utility of, and the good work done by, this international institution, joined it one after another, so that at present the membership has reached 60. On January 1, 1935, the following states were the members of the League: Abyssinia, Afghanistan, Albania, Argentine Republic, Australia, Austria, Belgium, Bolivia, Brazil, British Empire, Bulgaria, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Egypt, Estonia, Finland, France, Germany, Greece, Guatemala, Haiti, Honduras, Hungary, India, Iraq, Irish Free State, Italy, Japan, Latvia, Liberia, Lithuania, Luxemburg, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Persia, Peru, Poland, Portugal, Roumania, Salvador, Siam, South Africa, Soviet Russia, Spain, Sweden, Switzerland, Turkey, Uruguay, Venezuela, Yugoslavia. There are six states in the world, which by reason of their status and qualifications are eligible for admission to the League in accordance with the rules laid down for the purpose in the Covenant but are not members of it. They are Costa Rica, Ecuador, Mexico, Nejd, United States of America, and Yemen.

How the League works.—To carry on its work as stated in the preamble, the League has certain instruments of its own. It has an Assembly and a Council, with a permanent Secretariat. The offices of the League are established at Geneva in Switzerland, which is the official seat of the League. The League is intimately connected with the Permanent Court



A view of Geneva.



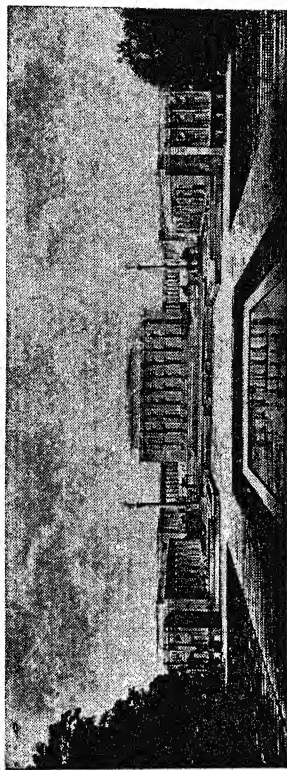
of International Justice situated at The Hague; and often uses the Court as an advisory body on matters referred to it or as the highest judicial international tribunal for deciding disputes. There is also the International Labour Organisation which, though autonomous, is now definitely connected with the League. The League has several technical and advisory committees.

The Assembly.—The Assembly is the most numerous body composed of not more than three representatives of each of the States Members of the League. It is the general body of the League and may be roughly compared to the legislature of a state. The representatives of any State Member may be accompanied by some substitute delegates or technical experts to attend the meetings of the League, but the latter have no right of voting. Whatever may be the number of representatives from a particular State Member attending any session of the League, they have only one cumulative vote. In this way the composition of the Assembly recognises the equality of States Members, whether the States are small or large.

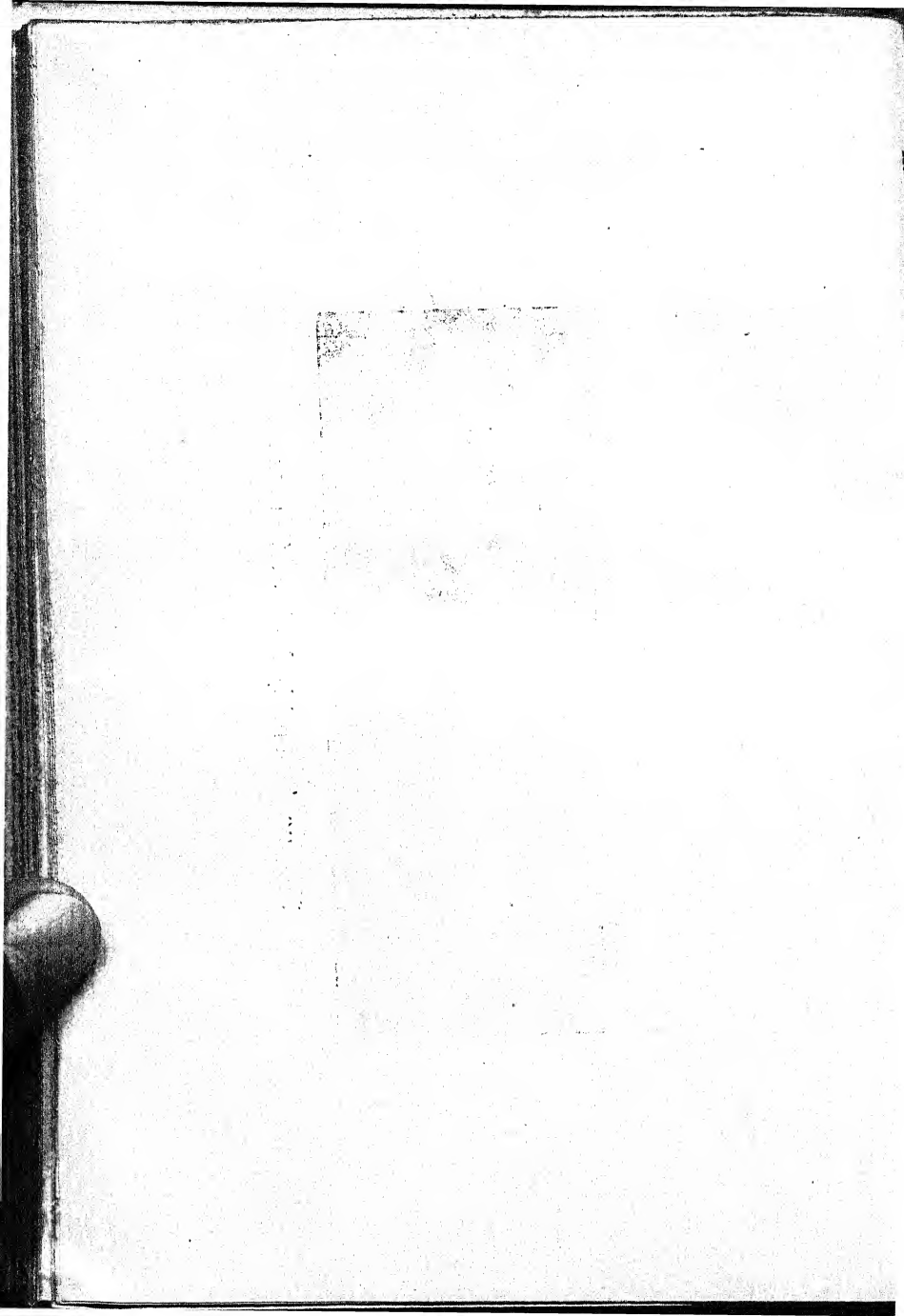
The Assembly meets at Geneva, in the month of September each year, and the session lasts about a month. If necessary, the meeting place may be shifted to any other town. One or more members may request the summoning of a special session of the League Assembly provided a majority of the States Members support the proposal. It has its own elected president and a vice-president. The powers of the Assembly are very wide. Article 3 of the Covenant

states: "The Assembly may deal at its meeting with any matter within the sphere of action of the League or affecting the peace of the world." It allots the work of its agenda among the six sub-committees and discusses the report of the Council. These committees discuss the matters referred to them by the Assembly and express their decisions thereon. The decisions of the Assembly are generally arrived at by the unanimity of the States Members.

The Council.—The Council of the League consists of three kinds of members, *viz.*, Permanent, Non-Permanent and Temporary members. There are four Permanent Members, *viz.*, Great Britain, France, Italy, and Soviet Russia, if we omit Japan, and Germany. The non-permanent members are appointed for three years. At present there are nine such members, three retiring every year. Temporary members are appointed whenever an important matter is before the Council and it is found necessary to hear the views of a State concerned in the matter, if that State has no representative in the Council. The temporary membership lasts only till that issue is settled. The Council selects a President for each session. As to its powers, it has very wide powers conferred on it by Article 4 of the Covenant which empowers the Council to deal at its meetings with "any matter within the sphere of action of the League or affecting the peace of the world." In addition to these it has some special exclusive powers. Because of these special powers it has become a very influential body and its membership is a very coveted privilege. The Council cannot be called an upper



League Assembly Hall at Geneva.



legislative house, it generally does the work entrusted to the executive in a State, and so it may be called the executive organ of the League.

The Secretariat.—The Secretariat at Geneva is divided into several sections according to the work given to each section. In each section there are officials belonging to different countries. Each section acts as Secretariat to the committee or the organisation to which it is attached. A section deals with matters coming within its scope which is indicated by its name. For example, there is the mandates section which deals with all matters concerning the mandatory powers and the administration of mandated territories. The Secretariat collects all informations necessary for the Assembly, the Council, or any of the committees appointed under the authority of the League; it helps those bodies in the discharge of their work. It prepares the agenda and keeps itself in touch with all humanitarian, social and political work which has any international bearing and provides correct information throughout the world in connection with the League.

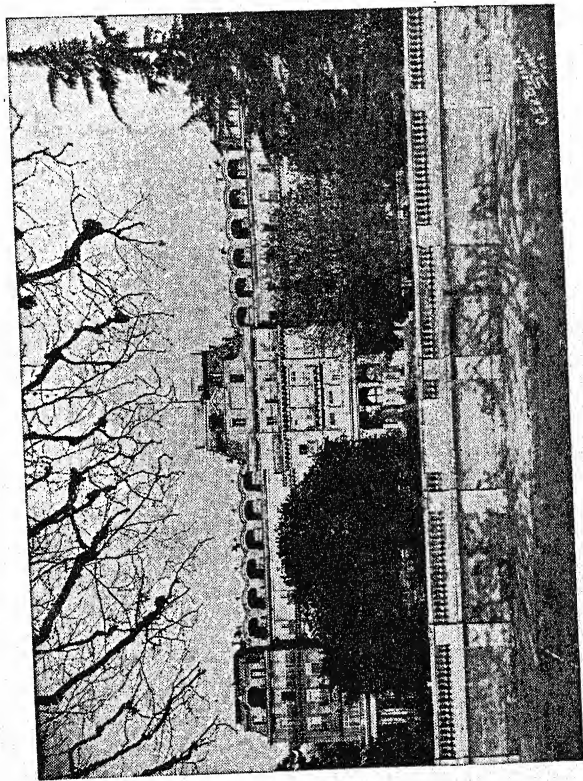
✓ **Finances of the League.**—The maintenance of a large Secretariat of six hundred and bringing out publications require a huge sum. Para 5 of Article 6 of the Covenant, as amended upto August 13, 1924, states: "The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly." The States Members of the League contribute a large amount for carrying on the work of the Assembly. It must be noted in this connection that the United States of

America helps the League by special annual contributions.

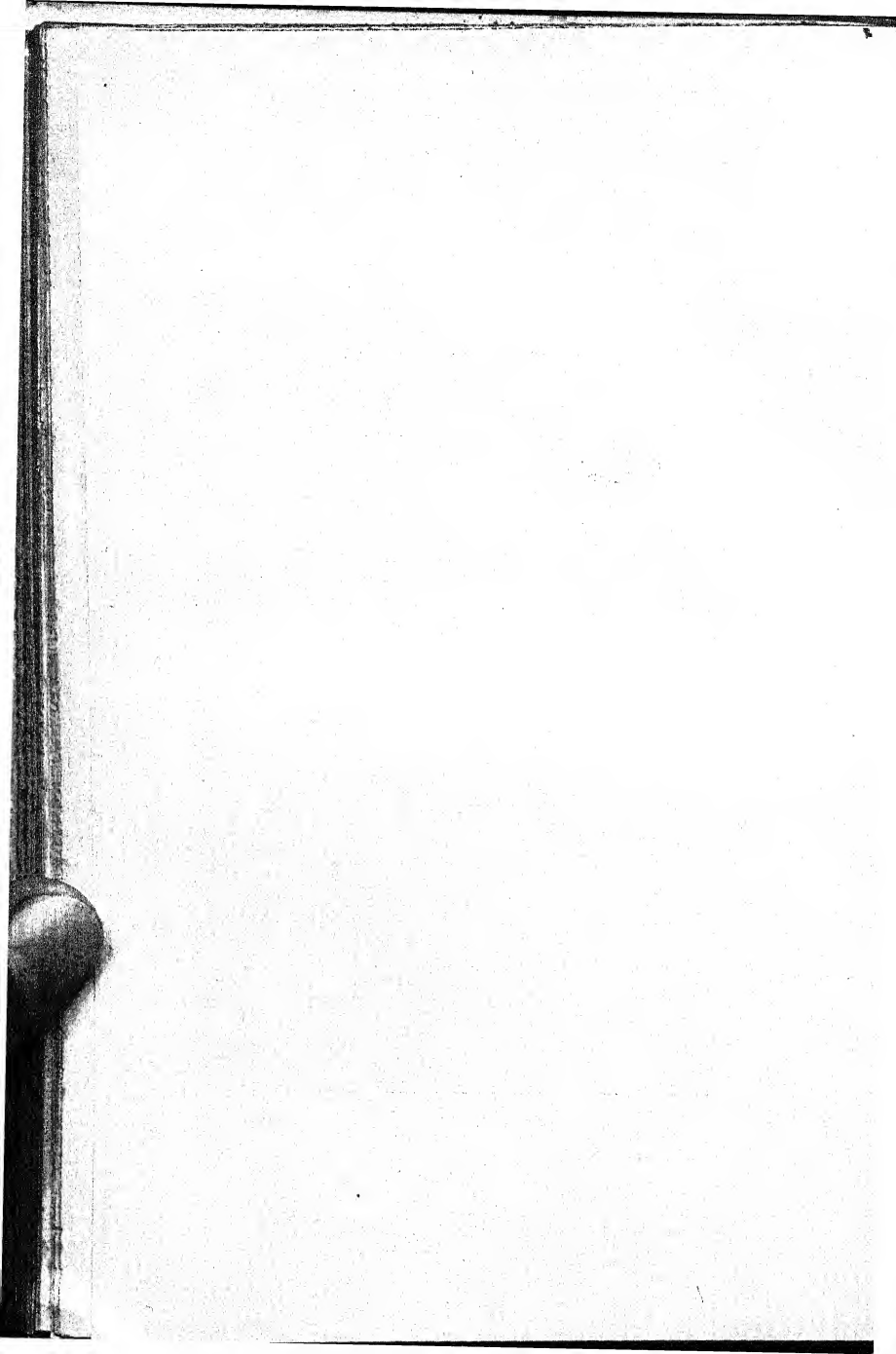
↓ ***The Permanent Court of International Justice.***—

This is a very important autonomous organisation connected with the work of International Peace. The Court sits at The Hague. At present it consists of fifteen judges who are elected for nine years and are eligible for re-election. It includes men with the legal experience of various countries with different legal systems and civilisations, a quality of utmost importance in the settling of international disputes. But it is a matter of regret that neither the Hindu nor the Muslim system of jurisprudence has yet been represented on the bench of the Court. The Court elects its President and Vice-President for three years. Whenever a dispute between nations is referred to the Court, each party has the right to appoint temporarily one judge of its own nationality, if it has already no such judge on the bench. This ensures a clear and full representation of its case when the dispute is settled.

The Court has two functions: as an advisory body it gives opinion only to the Assembly or the Council on any matter referred to it by these bodies; and as a judicial tribunal it decides international disputes referred to it by the parties concerned, in which case its decisions are legally binding on the parties. Besides this, the Court decides cases referred to it by the governments relating to the interpretation of a treaty; any question of international law; the existence of any fact which, if established, would constitute a breach of an international law; the nature



League Secretariat at Geneva.



or extent of the reparation due for the breach of an international obligation. In arriving at its decisions, the Court does not follow any particular code of international laws, as there is as yet no such code.

The International Labour Organisation.—This is also an autonomous institution. Owing to the growth of industries and consequently of industrial labour and its complications and inconveniences since the last century, the Peace Conference, at its meeting of January 25, 1919, appointed a Commission to report on the subject of labourers' welfare. At present there is the International Labour Conference which deals with the problem of social justice and peace in the world. It has four representatives from each of the States Members of the International Labour Organisation. Out of these four delegates one represents the workers, one represents employers, and two represent the government. There is, the International Labour Office which occupies the same position in relation to the conferences as the Secretariat in relation to the Assembly.

This whole organisation looks after the execution of the following principles :—

- (1) Labour is not to be considered as only an article of commerce.
- (2) The employers as well as the employees have the right of association for all lawful purposes.
- (3) Workers should be paid such wages as are adequate and reasonable to enable them to lead a comfortable life.

- (4) To adopt a forty-eight hour working week wherever it has not yet been adopted.
- (5) At least 24 hours continual rest should be given to the workers, which should include Sunday as far as possible.
- (6) Children should not be employed for work, and young persons should be so employed as to have sufficient time left for their education and physical development.
- (7) Men and women workers should get equal wages for works of equal value.
- (8) Each country should lay down a standard of conditions of labour with due regard to equitable economic treatment of all workers.
- (9) Provision should be made for inspection to see that regulations and laws for the protection and welfare of workers are being enforced. Women also should take part in this inspection.

Its Political Work.—By Articles 10 and 11 of the Covenant, all the Members of the League are required to respect the integrity and political independence of each other and promise to keep friendly relations between themselves. Any member of the League has the right to bring to the attention of the Assembly or the Council any circumstance that is likely to disturb the peace of the world. In that case the Assembly or the Council proceeds to take such measures as are necessary for maintaining peace. Under Article 12 and 13, the members agree to abide by the decision of the League through its Council or the Court. Article 16 states that in case

any member refuses to abide by the Leagues' decision in any dispute concerning that member the League shall consider that refusal as an act of hostility against itself and shall call upon all other members to boycott that recalcitrant state or even to wage war against it, if necessary.

States Members also agree to reduce their armaments in accordance with the plans prepared by the League. Although disarmament has not been as yet carried out to the desired extent, still many pacts and conferences. *e. g.*, the Locarno Pact, the Kellogg Pact and the Washington Treaty and Disarmament Conference have removed a part of the international distrust, and further expansion of armaments has for the time being ceased. This is no small achievement in view of the fact that prior to the establishment of the League all great powers of the world were spending vast sums of money on ship-building and other warlike preparations.

Disputes and Mandated Territories.—Apart from its general attempt for keeping peace, the League has been able to settle several disputes arising between the States Members. Some of these were Aaland Islands, Poland-Lithuania, Upper Silesia, Greeco-Italy, Iraq Boundary, etc., and the management of the mandated territories which were created on the ruins of the pre-war German and Turkish Empires. These territories were entrusted to some of the most advanced States Members of the League for better administration. These mandated territories were divided into three classes: *A* class consisting of the territories of the Turkish Empire,

e.g., Iraq, Palestine and Syria ; *B* class comprised the German possessions and colonies in the East and Central Africa ; *C* class comprised the island possessions of Germany in the Pacific Ocean and German South West Africa. To look after the administration of these mandated territories, the League has appointed a permanent Mandates Commission consisting of ten members who are representatives of the states that are not mandatory powers. These representatives hold no posts under the governments of their countries and are, therefore, free to watch the real interests of the mandated territories unhampered by any other motives. The Commission calls for annual reports from the mandatories regarding the administration of the mandated territories. The Commission considers the reports, gives its opinion, may call for further reports from the mandatories and suggests lines of improvement in the administration. In actual working, the Commission has justified its existence and as a result of its watchfulness the annual reports submitted by the mandatories are every time becoming more voluminous in view of the increasing demand, on behalf of the Commission, on various subjects.

Minorities.—As for the protection of minorities, for example, the Hungarian farmers in Roumania, some Poles in Lithuania, Jews in Hungary, Germans in Czechoslovakia and Musalmans in Jugoslavia, the League laid down certain principles which were included in the treaties concluded with those states. Some of these principles may be summed up as follows :—

- (i) Protection of life and liberty without distinction of birth, nationality, language, race or religion.
- (ii) All inhabitants to be free to profess any faith or religion subject to keeping of public order and public morals. They will have the right to change their religion.
- (iii) Equal enjoyment of civil and political rights without any distinction of creed or religion.
- (iv) People to be free to use any language in their private intercourse, commerce, religion, press or meetings.
- (v) Facilities to be given in public schools for imparting education through the medium of their own language.
- (vi) All people will be free to establish their own institutions, religious or educational, with the provision that minorities will have due share in the public funds.

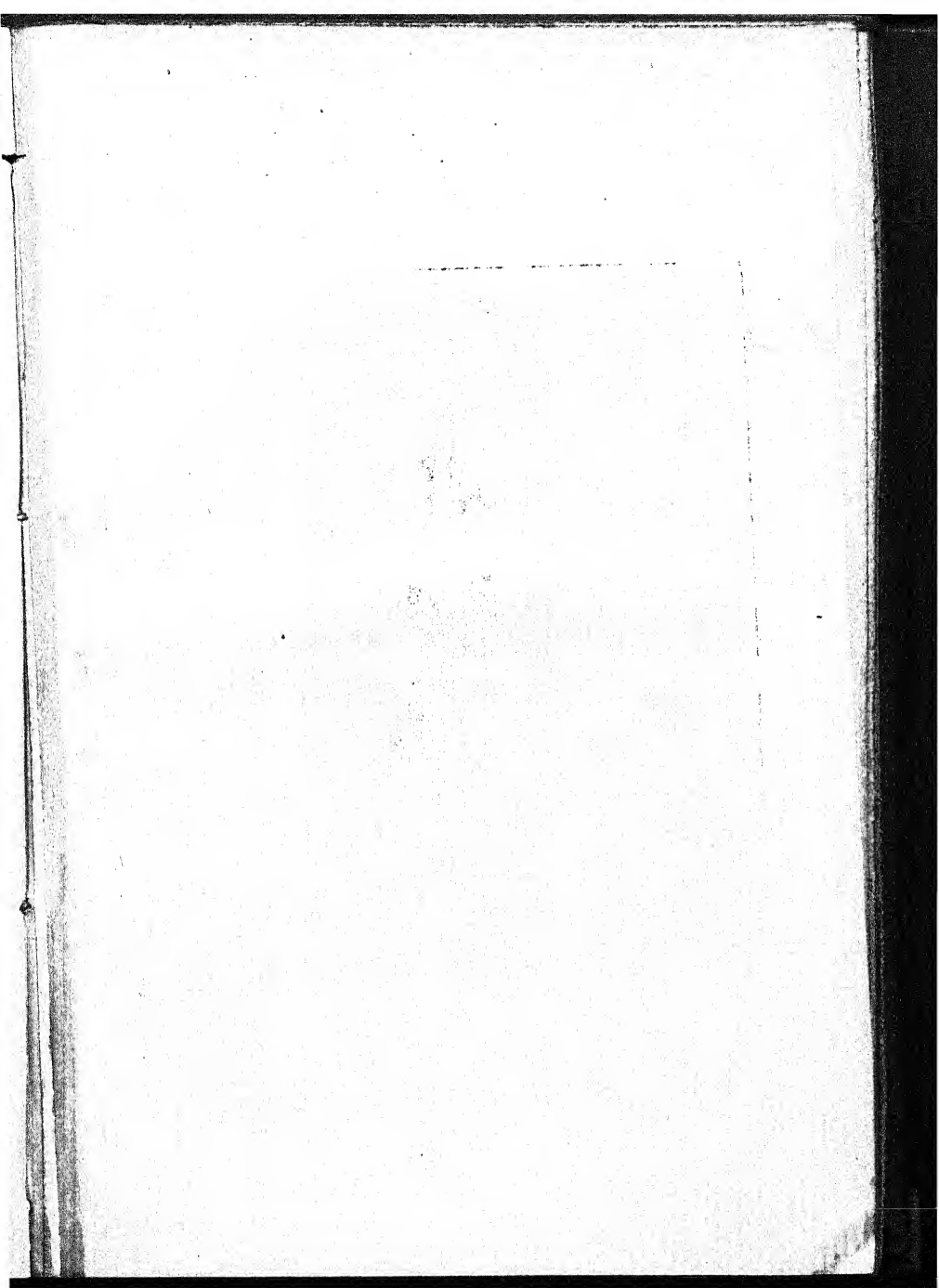
Administration of Some Territories.—The League had further taken the administration of certain territories, Saar and Danzing, in its own hands. Of course, the coal mines of the Saar Basin were entrusted to France but the whole district was administered by a Governing Commission of five assisted by a technical commission of eight, and an Advisory Council of thirty. But by the Plebiscite of the year 1935, the territory went back to Germany. The Free City of Danzing in Poland is under a High Commissioner of the League. The actual administration of this city is done by a council of 120 members elected by the natives, and a

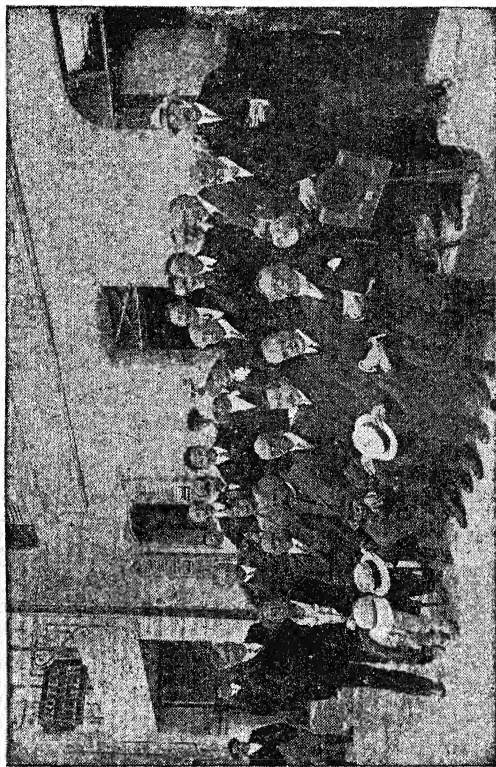
senate of 22 including the 8 heads of departments.

Thus, so far the political branch of the League has mainly dealt with European affairs, partly because there were no troubles of the same magnitude in Asia and elsewhere. But unfortunately, the Sino-Japanese dispute in the past years had created a big trouble in Asia, and the League had not left it untouched. It had started its machinery for the solution of this problem on right lines, with the moral support of not only Europe but even America. It is a mistake to assume, as some critics have done, that the League is purely European, for the benefit of Europe. The remark "what concerns humanity concerns me" is applicable to the outlook of the League, so it had tackled all the important political controversies which might have been the possible causes of war such as the protection of minorities, the relations between advanced and backward nations, the purely political boundary questions, commercial matters, labour questions, taxes, tariffs, etc. But it is to be regretted, however, that it has not decided problems of immigration and questions of equality of status between large and small states, which may be thorny questions for the future peace of the world.

Economic, Social and Humanitarian Works.—

To help the nations out of the war distress and to provide for their future co-operation in economic matters, the League of Nations at once took steps to convene an International Financial Congress which met at Brussels in 1920. Representatives from 39 states attended the Congress. They unanimously





Delegates to the International Agriculture Conference.

passed several resolutions suggesting to various nations the measures they should adopt to improve their financial conditions. Since then the League has regularly summoned economic conferences and has established committees to deal with such matters as international loans, means of international communications and transit whereby several troubles of many countries have been removed, and many a problem which might have resulted in hostilities between two neighbouring states has been settled by international co-operation.

In 1921, the Conference met at Barcelona and in 1923 at Geneva, and they passed several resolutions laying down the principles which govern the relations of states regarding the transit of goods through each other's territories. It is sufficient that, since then, international cooperation in this field, particularly in Europe, has been successful in solving many problems. The application of these principles guarantees free use of maritime ports to inland states.

Help to Prisoners and Refugees.—The problem of prisoners of war or refugees of the war confronted several European states. They were scattered in different countries and so it was difficult to return them to their respective native lands. Thanks to the efforts of Dr. Nansen who after working for over two years succeeded in completing his noble mission of returning 200, 000 prisoners from Siberia only. Similarly the work of enabling the 200, 000 Russian refugees scattered all over Europe was entrusted to Dr. Nansen who was assisted by the Red Cross Societies, and other institutions and organisations.

Again, 150, 000 Greek nationals who were in Asia Minor after the defeat of Greece by Italy, were helped by the League through the Red Cross Society and a Greek Refugee Settlement Commission. The League financially helped the Bulgarian Government in coping with the problem of refugees in 1926, and of earthquake in 1928. A similar aid was given to China in 1931 when the Chinese rivers devastated large tracts of land and rendered thousands of families homeless.

These examples of some of the activities of the League dictated the necessity of establishing an organisation of the League to deal with such matters. The President of the Italian Red Cross Society proposed to the League that for mutual assistance in giving relief to the peoples stricken by disaster, an international organisation be established. In 1924, the Assembly requested the Council to define the scope of such an organisation. After receiving report of a committee appointed for the purpose, a draft statute was prepared. It was circulated to various governments for their suggestions. A conference was then summoned in which delegates from 41 countries sat. On July 12, 1927, an International Relief Union was established. Each state makes a contribution in a certain proportion and these contributions together with voluntary subscriptions by philanthropic associations and individuals form a fund for relief work in every country in the time of disaster. The Union, without waiting for appeals to the public, at once renders first aid in the affected territories and organises the work of all other relief

societies, particularly the Red Cross Societies. These activities of the League are not meant for any particular country or continent. They concern the welfare of the world and this service of humanity is a great and noble object which deserves the active co-operation and sympathy of all peoples without distinction of creed or race.

Health Organisation.—For the medical aid of different countries the League has an International Health Organisation which comprises:—

- (i) An Advisory Council, which is formed by the Office International d'Hygiène Publique;
- (ii) Health Committee, with its head quarters at Geneva, and
- (iii) A Secretariat, to assist the organisation.

All the States Members of the League as well as other non-member states help the Organisation irrespective of any political considerations.

The functions of the Health Organisation are threefold, *viz.* (i) to assist those individuals who are carrying on researches into the causes of epidemics. (ii) to collect and disseminate all useful information regarding health and sanitation, and (iii) to render active help in combating the outbreak of epidemics in any part of the world. Several committees have been appointed by the Organisation to tour the parts affected by particular epidemics, to study the causes of those diseases and to suggest practical ways to combat them. For example, there is the Malaria Commission which has visited all important tropical countries where the outbreaks of malaria cause

thousands of deaths every year. This Commission has also visited India where we find malaria breaking out every year. It is expected that the report of this Commission, when it is issued, will help the tropical countries to stamp out this disease and save the lives of unfortunate victims. Similarly, there is the Tuberculosis Committee which is investigating the causes of this fatal disease. This Organisation has committees and Commissions; the latter visit different countries. The organisation sends useful information to various countries. Health conferences are also summoned. The League has rendered medical aid to Russia during typhus and relapsing fever, besides helping Poland, China and various other countries. It is hoped that in future the Health Organisation of the League would render very great service to the cause of the health and sanitation of peoples of various countries. Almost all countries are co-operating with the League in this noble task. Very recently the Government of Brazil (South America) has offered to establish at Rio De Janerio an international centre for the study of leprosy, a very great curse. This centre will be placed at the disposal of the League. In Argentine Republic, Brazil, Chile, and Uruguay infant mortality is very great. Consequently an international conference was held at Lima in July 1930, to study the causes, and its results have helped these countries much. These are a few of the many activities of the League, by which its Health Organisation is serving humanity.

✓ ***Prevention of Traffic in Opium and other Dangerous Drugs.***—The Permanent Central Board,

established in 1928, calls for annual reports from all the contracting parties regarding their requirements of opium and other dangerous drugs for medicinal purposes in their territories. China and neighbouring countries count a great number of opium eaters and smokers. It was considered necessary to make special efforts to check the evil in these countries. The Council of the League, in its session of March 1929, appointed a Commission of Inquiry to investigate and report on the matter. This Commission visited Burma, Straits Settlements, Java, Sumatra, British North Borneo, Siam, French-Indo-China, Macao, Hong Kong, the Philippine Islands, Formosa, Shanghai, Mukden, etc. It is hoped that after a time all these countries will be freed from the evil of opium eating and smoking, resulting in the improved health of those unfortunate victims who had no friends to give them proper advice in the matter. In 1931, the International Conference for the limitation of the manufacture of Narcotic Drugs, attended by 57 countries, arrived at an important convention which marks an entirely new and highly important development in international co-operation by regulating an industry. It is gratifying that several countries have expressed their willingness to stop illicit traffic in these dangerous drugs, and it is hoped that time is not far when the use of poisonous substances will cease not only in wars, but even in peace times the civil population in every country will look upon these drugs, which ruin their health and lower their morals, as if they should be shunned.

Traffic in Women and Children.—This is an old evil. People used to sell girls and children, the former for immoral purposes and the latter for slavery and forced labour, by taking them to foreign countries. Many countries realised the harmful consequences of such traffic which could not be stopped without international co-operation. From 1902 to 1914, four conferences were held to trace the sources of the traffic, devise measures to stop it and to rescue those women and children who were unable to free themselves from the clutches of the traffickers. But no encouraging result was obtained. In 1923, the Council of the League appointed a committee, under Article 23 of the Covenant, to investigate into the extent of the traffic and to find out the secret societies that were engaged in it. For six years a very extensive inquiry was conducted and useful information collected. This was placed at the disposal of all governments with the recommendations of the Assembly, and now the traffic has decreased very much.

The fate of children of foreign nationals who were illegitimate or minors or who were enticed away for employment in foreign countries, was still worse. To rescue them and to prevent further extension of the evil, the fifth Assembly (1924) invited the States Members to agree to the following Declaration of Geneva.

“By the present Declaration of the Rights of the Child, commonly known as the Declaration of Geneva, men and women of

all the nations recognising that mankind owes to the child the best that it has to give, declare or accept it as their duty that, beyond and above all considerations of the race, nationality or creed.

- (i) The child must be given the means requisite for its normal development, both materially and spiritually.
- (ii) The child that is hungry must be fed; the child that is sick must be helped; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored;
- (iii) The child must be first to receive relief in times of distress;
- (iv) The child must be put in a position to earn livelihood and must be protected against every form of exploitation;
- (v) The child must be brought up in the consciousness that its talents must be devoted to the service of its fellowmen."

The Advisory Committee of the League appointed a sub-committee, known as the Committee for the Protection of Children. The activities of this Committee, supplemented by those of such organisations as the Boy Scouts and Girl Guides, International Women's Organisation, American National Conference of Social Service, etc., are proving very helpful towards the welfare of children. States are asked to provide maintenance for foreign minors, to send back such children to countries of

their origin, and to arrange for the marriage of parents of illegitimate children. Juvenile courts are being opened and necessary steps are being taken to look after blind children.

Nations are also cooperating with a view to stop the publication of obscene literature, and the showing of immoral cinematograph films even if these are advertised to be meant for illustrating the evils of dangerous diseases. It has been discovered that in certain countries obscene picture post cards are printed, which are secretly sent out to different countries where they are sold to children. These pictures produce very bad impressions on the child's mind at a time when he should be kept away from these ideas. Accordingly, some countries have created zones around about their schools, penalising the selling of such pictures or literature within those zones. As many as 43 States have signed a convention to stop the publication of this sort of literature.

In short, nations are now aroused to the consciousness of doing all in their power to bring about international co-operation for the welfare of children.

Intellectual Co-operation.—We all know that most of the troubles in the world arise on account of misunderstandings, therefore intellectual co-operation averts troubles and results in creating mutual sympathies between individuals or nations. This can be done only by communicating the correct views of one party to the other. Often times the teachings of men who have risen to fame, have determined the course of history of nations and have led to great changes and revolutions. Teachings of men like

Rousseau and Jefferson led to the outbreak of the French Revolution and the War of American Independence. Such writings as 'East is East and West is West', create not sympathies but hatred. In fact, it is now being increasingly realised that intellectual co-operation is very necessary to maintain good relations between different nations. The League has undertaken this work with earnestness. The importance of this intellectual co-operation between nations has been very well emphasized in the sixth report of the International Committee of Intellectual Co-operation. "Without intellectual *rapprochement* of the nations, without good mutual understanding and without concerted action to improve by mutual assistance and co-operation the conditions governing the thought, scientific work and education of the young, it is to be feared that the future of the League would be uncertain and the efforts we are elsewhere making to establish durable peace would be largely wasted."

To bring about this co-operation the League has established the International Committee of Intellectual Co-operation.

To achieve understanding and cooperation in the world of thought, this is the aim of the Organisation of Intellectual co-operation of the League of Nations. The committee which directs this part of the League's work is composed of representatives, not of government representatives, but of the people engaged in scholarly and artistic work in many countries. The liberal arts and the humanitarian and exact sciences have their particular

problems in international co-operation. This committee endeavours to deal with these. It goes a step further and attempts to discover by means of discussions carried on with the leaders of education in many countries what method should be used in secondary and in higher education in order to prepare students to realise the most significant feature of modern society—that of the necessary interdependence of peoples.

The Committee on International Co-operation, which recently met at Geneva, declared that the more the people of the world may be divided by political or economic interests so much the more will the greatest spirits among them feel the urge to come close to each other, to understand each other and to work in co-operation in order to maintain a general culture, a universality of thought. Political and economic developments within the different countries have presented special difficulties during the past few years, but these difficulties have merely served to emphasise the importance of the work of intellectual co-operation which should achieve a sort of synthesis between the two tendencies at work in the modern world, nationalism and internationalism.

One of the most interesting activities which has been promoted in this connection is the objective and disinterested study of international relations. As a result of two years' preparatory work, in co-operation with national organisations and schools interested in the scientific study of international relations, a Conference was held in London in June, 1935, at

which representatives from these various national organisations discussed the questions of collective security.

The method of formal agreement between Governments is being pursued, too, in connection with the Committee's discussion of the problem of history teaching and school textbooks. The draft declaration, which the Committee has drawn up for the signature of Governments with regard to the revision of history textbooks, says that since they are "desirous of drawing closer and intensifying the good relations uniting them with other countries; convinced that those relations will be further strengthened if the younger generation in every country is given a wider knowledge of the history of other nations; realising the necessity of obviating the dangers that may arise through the tendentious presentations of certain historical events in school textbooks; the Governments declare that they agree upon the following principles:-

1. It is desirable that the attention of the competent authorities in every country, and of authors of school textbooks, should be drawn to the expediency.
 - (a) Of assigning as large a place as possible to the history of other nations;
 - (b) Of giving prominence, in the teaching of world history, to facts calculated to bring about the realisation of the interdependence of nations.
2. It is desirable that every Government should endeavour to find means, more especially in connection with the choice of school-books,

of putting school children on their guard against all such allegations and interpretation as might engender unfair prejudices against other nations."

In its concern with the problem of teaching, the Committee has sought the co-operation of the directors of higher education in the various countries.

By creating opportunities for international contacts and by publishing the discussions on the common problems of intellectual life in all countries, the League has thus contributed at the one time to the solution of these problems and to the development of a co-operative spirit among those engaged in dealing with them in the various countries. A further method that has been employed in the effort to make available the best that the existing civilisations in the world have to offer is the translation and publication of outstanding and characteristic works of the literature and art in various countries.

By these measures the League hopes to create a better understanding between nations in the world, for it is upon the success of bringing several cultures together that the propagation of the ideal of international peace depends.

India in the League.—Article I of the Covenant of the League of Nations lays down in clause 2, that "Any fully self-governing State, Dominion or Colony not named in the annex may become a Member of the League if its admission is agreed to by 2/3rd of the Assembly, provided that it shall give effective guarantees of its sincere intentions to observe its inter-national obligations, and

shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments." Judged in the light of this clause, India cannot claim to be a member of the League as it is not a fully self-governing State or dominion. Though she has been promised the same status inside the British Commonwealth of Nations as that of any other self-governing dominion, *e.g.*, Canada, Australia, or Newzealand, she is at the present time ruled by Britain. If, therefore, India had not become a member of the League at the time the League was established, by virtue of her being a signatory to the peace treaty, she would have remained outside this important international body for a long time. Fortunately under clause I of the Covenant, all the signatories to the Peace Treaty were made original members of the League without any conditions of membership other than that of accepting the terms of the Covenant. And as India was one of the signatories, named in the Annex, she *ipso facto* became a member of the League.

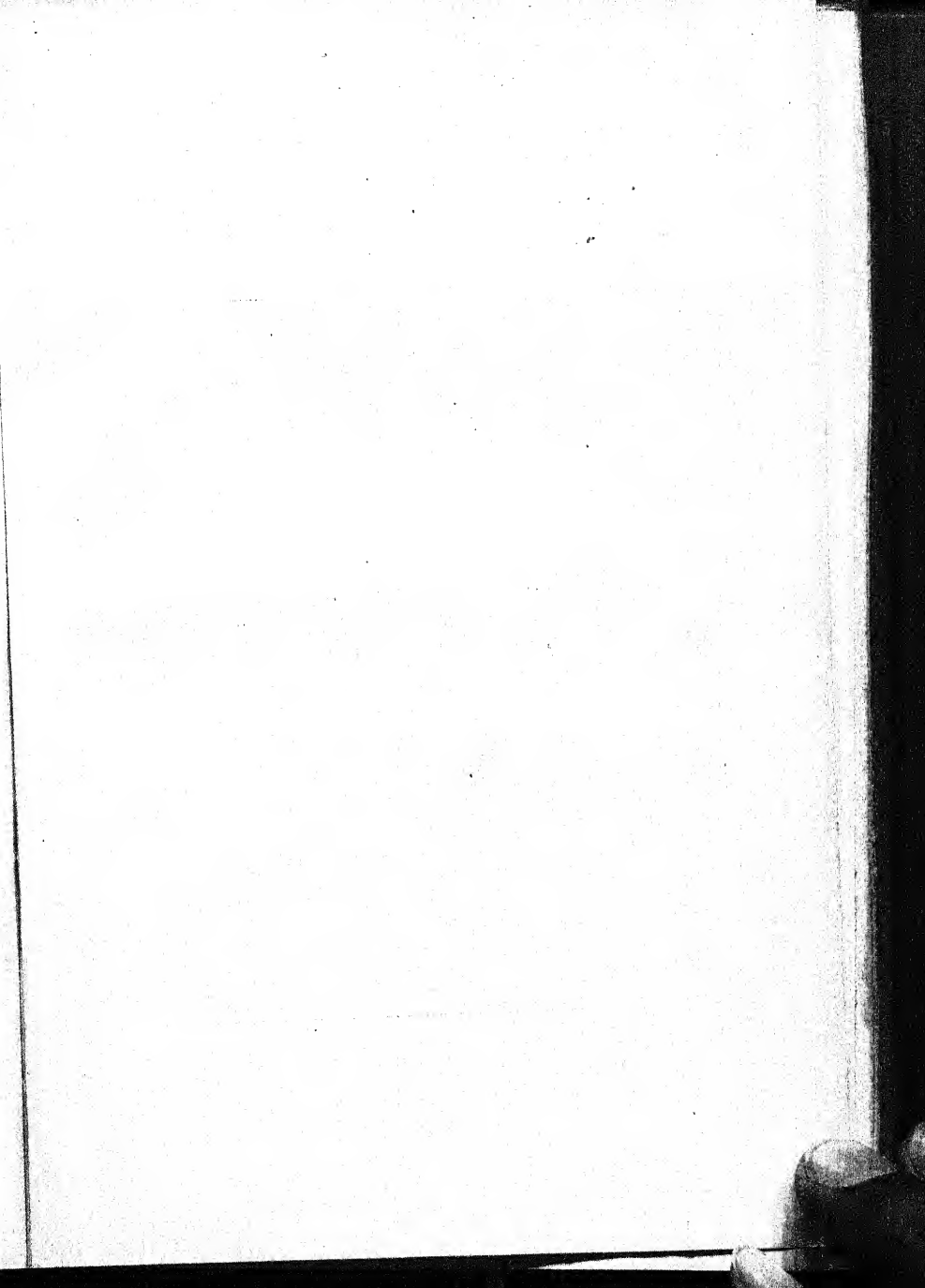
There is no member of the League, except India, which is not a fully self-governing country. Out of the 60 States Members of the League India is, therefore, the only member with equal rights like any other State Member, including France, Great Britain, Italy, Soviet Russia, or Japan, to participate in all international matters within the scope of the League, without being a self-governing country.

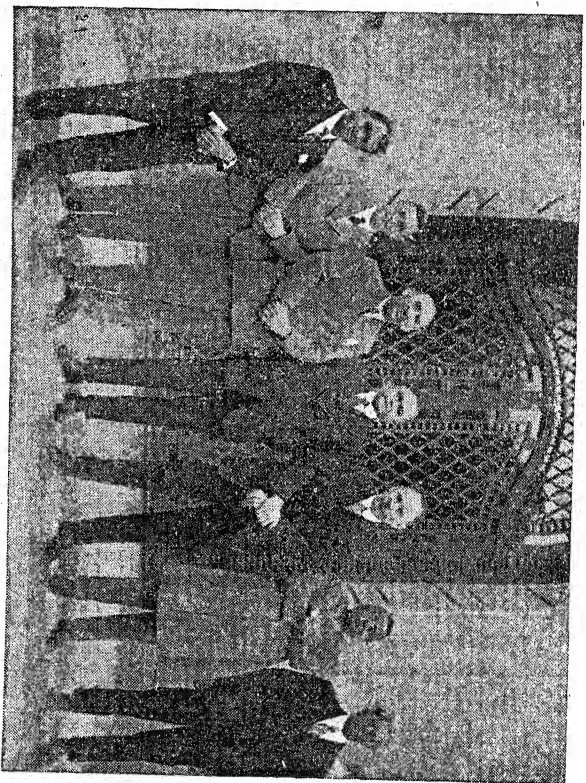
In all Assemblies and Conferences of the League, the representatives of India occupy the same position as those of France, Great Britain, Italy or Russia.

In other words, so far as the affairs of the League are concerned, India does enjoy in international matters, even at the present time, the status of a fully self-governing State.

Status and Work of the Indian Delegation.—The delegation of each Member State to the Assembly of the League consists of not more than 3 representatives. The Indian delegation of 3 has always included an Indian Prince or his representative. This has been of great value to India in voicing her opinion in League matters as a single State, without showing any such political divisions as Indian India and British India. And as the delegation of each State commands only one vote, irrespective of its strength and composition, the Indian State delegate has spoken not on behalf of the Indian States alone but on behalf of united India as a whole. We can, therefore, safely say that in international affairs India has been one political unit. This is undoubtedly a step towards the formation of a federal state in India, consisting of Indian States and the British Indian provinces.

Indian Labour and Economic Question.—India is mainly an agricultural country. Her agricultural produce is so large that after feeding her large population there is always a surplus which has to be exported to the countries that need it. In this export, India comes into direct contact with foreign countries. After agriculture comes industry, and such other departments as railways, where millions of workers earn their livelihood. The necessity of improving the lot of labouring class is very great.





Indian Delegation to the International Labour Conference. Lala Lajpat Rai, second from the right.

The League of Nations has taken up this work, and happily India has been recognized as one of the eight most important industrial States and has, therefore, been given a permanent seat on the Governing Body of the International Labour Organisation of the League. In all International Labour Conferences, four Indian representatives, two representing the Government of India, and two representing the Workers and Employers respectively, take an active part.

India has ratified almost all the conventions of these Conferences, *viz.* the sixty-hour week, fixing the maximum of sixty hours of work per week; prohibition of employment of children below a certain minimum age in factories, and a minimum standard of wages, etc. In accordance with these Conventions, the Government of India have enacted necessary legislation to give effect to the reforms contained in them. The Indian Factories Act has also been amended. All this is known to every employee on a workshop or railway, who is now able to understand what good the Geneva Convention has done for him.

Opium and other Dangerous Drugs.—As already said, one of the humanitarian activities of the League is the control of traffic in opium and other dangerous drugs. India produces large quantities of opium, and for a long time the Government of India have derived large revenues from opium cultivation. A very large quantity of this produce was exported to China where opium smoking has badly affected the health of the Chinese. Ever since the time the League of Nations took up the

work of preventing this trade, the Government of India and the Indian States have sincerely co-operated with the League, although in doing so they have made very great sacrifices of revenues.

Health.—It is needless to describe in detail the losses which a country has to suffer on account of unsatisfactory health of its people. Suffice it to say that in a tropical country, like India, there are many epidemic diseases which not only claim a heavy toll of life every year, but also greatly reduce the vitality of every victim and the country loses the work which could be accomplished by a healthy worker. Of the many tropical diseases which visit India every year, malaria is the most important. There is no part of India which is free from this disease. The poor families of agriculturists and industrial workers are put to great difficulties and often times when the breadwinner falls a victim to the diseases (cholera, small pox, malaria and the like) his family has to starve. Therefore, it is the duty of the Government to check the spread of diseases. It is a work in which international co-operation is of the greatest value.

The Malaria Commission of the League of Nations visited parts of India and received very useful information on malaria. Besides this, India has sent delegates to all international conferences, including the Rabies Conference held at Paris, and the International Relief Union Conference held at Geneva. As a result of this co-operation, India will be enabled soon to give relief to her unhappy children who fall victims to the diseases which visit this country every year. In this way she will improve the

health of the people, a task which could not have been successfully done without international co-operation.

The Singapore Bureau of the League in close proximity to India has been broadcasting important information to Indian ports relating to the diseases which break out among the sea passengers.

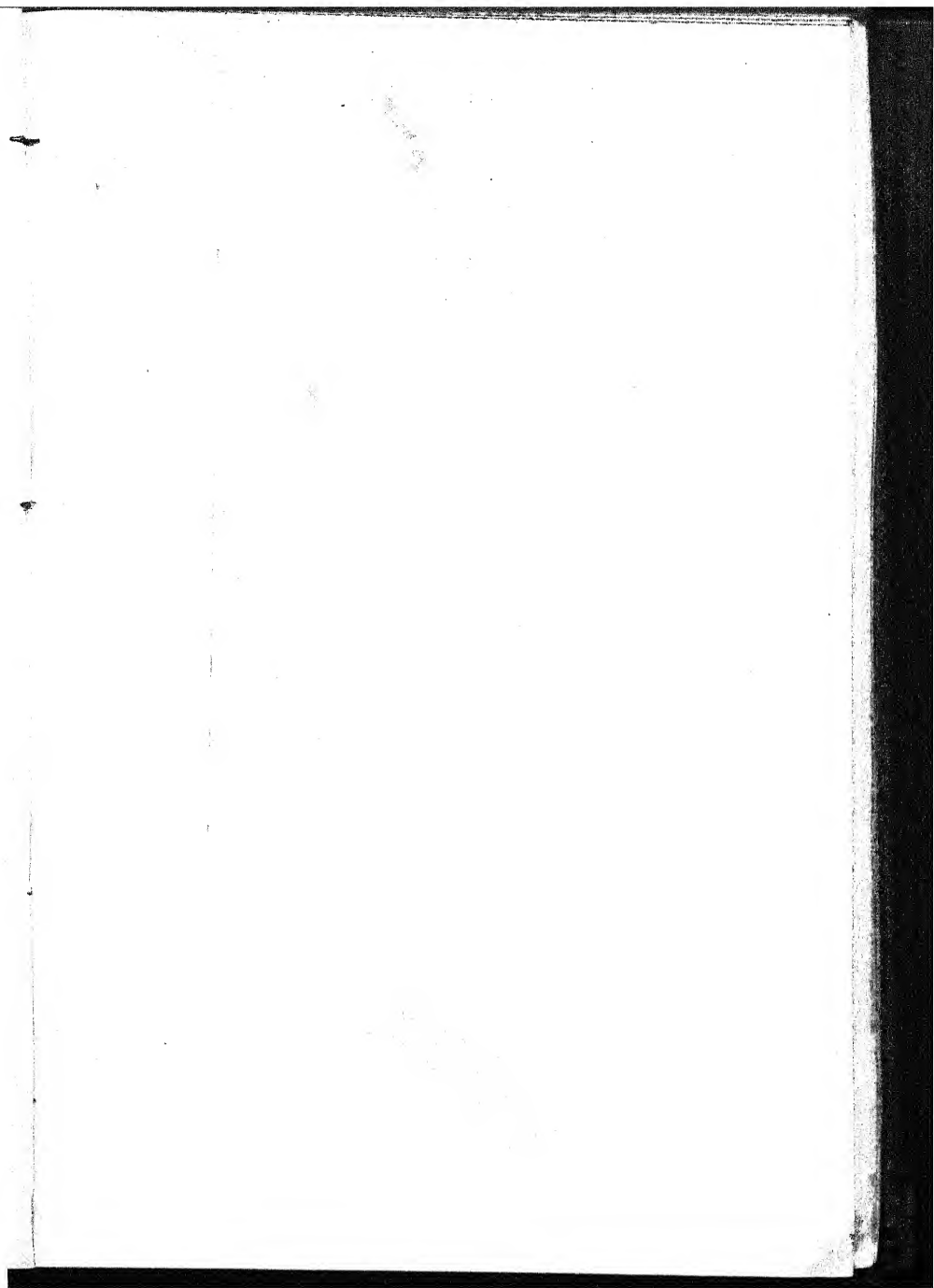
Intellectual Co-operation;—The Indian civilization is very old. Her culture occupies a very prominent place among world's cultures. She has much to teach to other countries, and has also much to learn from them. This can be done only by means of international co-operation. Ever since the establishment by the League of a committee on intellectual co-operation, consisting of nearly 15 experts in literature and science, representing the various countries and cultures of the world, India has been given a place on the committee. In co-operation with this committee of the League several countries are improving the education of their peoples. The part of India in this noble work is conspicuous. Not only is India helping others but her own intellectual life is acquiring a new vigour by coming in contact with the cultures of other countries. Eminent Indians like Sir Jagdish Chandra Bose, Sir C. V. Raman and Sir Radha Krishnan, are invited by foreign countries as educationists and scientists, to deliver lectures at their seats of learning. This international co-operation results in a better understanding among the nations, of each other's view point. This removes various misunderstandings and brings the peoples of different countries closer together.

Dr. Rabindra Nath Tagore's Vishvabharati at Bolpur, is an international university in which prominent professors from many foreign countries of the world are teaching. It is this kind of co-operation that is needed to secure international peace in the world.

The Intellectual Committee of the League is arranging to supply information regarding teaching at various universities in the world. This coupled with the interchange of professors and teachers will contribute largely to remove international jealousies. Educational tours of students who visit other countries, is another means whereby the people of India can understand the peoples of other countries to the mutual benefit of all. In fact, India will gain immensely by taking an active part in the educational work of the League.

India's Status in the League.—It must be admitted that though in theory India enjoys equality of status inside the League, there is considerable difference in practice. Though Germany, which in 1914 was called the most cruel and barbarous nation—not rightly, of course, but on account of the War, in which she was accused of having broken international pledges and invaded the neutrality of smaller and weaker nations—has been given a permanent seat on the Council of the League, India has not yet been given even a non-permanent seat on that important body. This is a very unsatisfactory state of affairs and needs to be changed.

India is the second largest Member State of the League in point of population, China occupying the





Sir Eric Drummond.
First Secretary General to the League.

first place. And yet India has been denied a place on the Council though her financial contribution is larger than that of many a state that has either a permanent or a non-permanent seat on the Council. And again, India and China together contain nearly half the world's population and yet they do not have even one permanent seat between them. Really they ought each to have a permanent seat.

Similarly, in the Permanent Court of International Justice there is no Indian Judge. When once at time of election, an Indian name was proposed there was only one vote for him and that too of the Indian delegate. Judges from several smaller states have been elected to the bench of the Court, but the non-election of an Indian does no credit to the International League, because Indian culture and system of jurisprudence remain unrepresented on such an important international body. This is partly due to our dependence on Great Britain. In future, however, when India gets self-government neither the members of the League would dare leave out India in any important election, nor India's national pride would countenance any discrimination against her.

As regards the appointments in the General Secretariat of the League, there are over 600 officials representing the different 60 Members States, and of these India has not more than half a dozen to her credit, though her financial contribution is 56 units out of 986, *i.e.*, nearly 6%. This is not creditable to the League. Being a dependent country, India is considered politically weak in the League. But the principle underlying the establishment of the League

is that of equality for all members. In future appointments, Indians should be more largely represented in the Secretariat of the League. This will certainly arouse deeper interest among the Indians in all the affairs of the League and ultimately the League will become more popular by enlisting active sympathy of this vast country by doing justice to her even in minor matters like appointments.

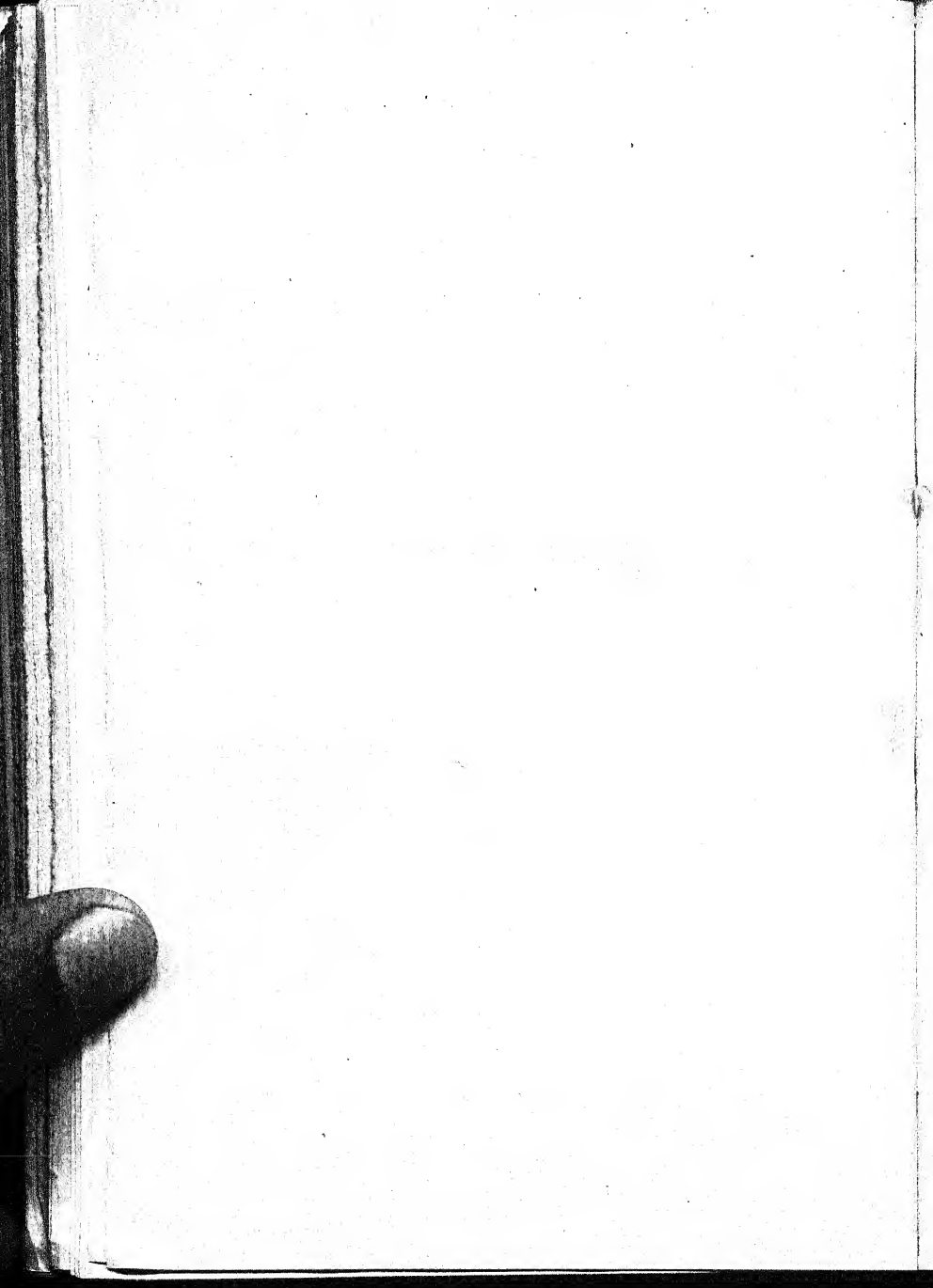
In future India will gain largely by her membership of the League by cutting down her ever increasing military expenditure. It is on account of the huge expenditure on the army that she cannot spend enough on the education of her children.

When India's neighbours are members of the League and she too inside the international body, all fear of invasions from the north-west will be gone and large sums now spent on keeping the most modern armaments in that quarter, will beneficially be devoted to expansion of education and sanitation, which are the two greatest needs of our country at the present moment.

Conclusion,—In conclusion, we may say that the preceding paragraphs indicate how India is likely to gain by her membership of the League. She has to contribute only a few hundred thousand rupees every year and as a result of it she can, besides getting other advantages, save millions from her military budget. In addition to these military gains, she can be instrumental in spreading the blessings of peace on the earth.

We can discharge our duty to the League, first of all, by making it known to the masses in the

country. There are very few persons at present who know what the League is or what its aims and objects are and how it can be used as an instrument of peace in the world. Therefore, efforts should be made to impress upon the minds of students the usefulness of this international organisation. Students are the most proper vehicle for disseminating such useful ideas to the people in general. It is they whose opinions and views will influence the future generation. Then again, small study circles should be organised in all big cities in India, where people can meet and discuss the working and activities of the League. Press will prove to be of great help in this work. If the important newspapers of India determine to make the League known throughout the country, the task can be done quickly. Contact should be established with foreign countries through travels and correspondence. This will enable the younger generation to feel sympathy for people in other lands and their outlook of life will become international in preference to provincial or even national.



QUESTIONS.

I.

1. Define Civics and briefly discuss its scope and methods.

2. Distinguish between " Society " and " State " and briefly discuss their mutual relations.

3. What are the chief forms of government and why is democratic government generally preferred ?

4. What are the various purposes of punishment ?

5. What are the duties that a citizen owes to the State ? To what extent can the State compel him to perform them ?

6. " Local Self-Government is a necessary step to National Self-Government. " Discuss.

7. How far is the State justified in removing social evils like drink and early marriage by legislation ?

8. What part do political parties play in the work of the State and the education of the citizen ?

9. What is "Nationalism" and " Internationalism " ? Are the two necessarily incompatible ?

10. State the reasons for and against woman franchise.

II

I. What is the justification for teaching Civics at Colleges ?

2. What are the chief functions which in your opinion every government should perform ?

3. "Life, liberty and the pursuit of happiness are the inalienable rights of man ". Comment.

4. It has been said that the doctrine of Equality is a monstrosity. What do you think ?

5. What principles should regulate the relations of the Executive and the Legislature ?

6. Explain the proposition of Professor Mc Taggart that not society, but the individual is the end of social life. "

7. Treitschke said that nothing can be above the State and there is no standard of justice to which it is obliged to conform. Criticise.

8. What do you know of the International Labour Office at Geneva ?

9. What methods will you employ to awaken and maintain popular interest in municipal affairs ?

10. What should be the relations of the Judiciary with the Executive and the Legislature ?

III

1. Is social life possible without government ? What is the necessity and origin of government ?

2. Distinguish the province of Civics from that of Politics and Religion.

3. " Give the State as little as you can and get as much out of the State as you can. " Explain and show how far you agree with this attitude of a citizen

4. " Family is the eternal school of social life. " Explain and discuss how social virtues are first developed in family life.

5. What part do villages and towns play in national life ? How are they organised for civic purposes ?

6. " Man's higher progress is a series of subordinations of a smaller self to a higher and wider self. " Explain and state the relation of one's duties to his family, to his locality, and to his nation.

7. What do you understand by Democracy? Discuss the merits and defects of a democratic government.

8. What are the various organs and divisions of government? Enumerate the main functions which each of them performs.

9. What do you understand by the term 'rights of man'? How are they recognised and made secure to a citizen?

10. "Men are born for the sake of one another. Either teach them or bear with them." Explain and discuss the place of society and education in human life.

IV

1. 'State is the first essential condition of civilised life.' Explain.

2. What do you understand by the terms 'equality' and 'liberty'?

3. How do you define citizenship? What are the obligations of the citizen toward the State?

4. Describe the different theories of the origin of society, and criticize them.

5. What is the end of the State? By what means does the State realise the end?

6. Give a brief description of the different types of constitutions, explaining the grounds on which they are classified.

7. Give a definition of 'right', and state what rights should, in your opinion, be guaranteed by the State.

8. On what grounds is the right of the State to punish based?

9. What is the difference between the relation of a citizen with his religious community and with his State?

10. Can you distinguish between good and bad laws? If so, what is the basis of distinction?

11. What is the meaning of 'adult franchise'? State the grounds for and against its adoption in any country.
